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TRANSCRIPT OF PROCEEDINGS

MONTANA CONSTITUTIONAL CONVENTION

March 2, 1972

to

March 5, 1972

Vol. VI

Convention Hall

State Capitol

Helena, Montana

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MONTANA CONSTITUTIONAL CONVENTION

March 2, 1972 36th Convention Day Convention Hall

9:13 o'clock A.M. Helena, Montana

PRESIDENT GRAYBILL: The Convention will be in order. If you'll all please stand, Reverend Harper will lead us in the Invocation this morning.

DELEGATE HARPER: Our Father, we do believe that you guided our fathers to build this land, a nation of the people, by the people and for the people. You gave them the faith to believe that they may become one in spirit bound by the ties of liberty and justice for all. Now, give us that faith again. Remove from our minds all bitterness and contempt for one another, and replace, this morning, a renewed dedication to serve the least, last and lost, that will bind us not only again to each other in harmony, but will link us again in heart with your Son who said, inasmuch as you've done it to one of the least of these my brothers, you've done it to me, Amen.

PRESIDENT GRAYBILL: We'll take attendance by voting Aye on the voting machines.

CLERK HANSON: Mr. President, may Delegates Campbell and Payne be excused?

PRESIDENT GRAYBILL: Campbell and Payne, yes. Mr. Kelleher is excused.

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CLERK HANSON: Delegate Robinson, Delegate Toole, Delegate Robinson, Delegate Toole.

PRESIDENT GRAYBILL: Very well, please take attendance.

Aasheim	-	Present	Cain	-	Present
Anderson, J.	-	Present	Campbell	-	Present
Anderson, O.	-	Present	Cate	-	Present
Arbanas	-	Present	Champoux	-	Present
Arness	-	Present	Choate	-	Present
Aronow	-	Present	Conover	-	Present
Artz	-	Present	Cross	-	Present
Ask	-	Present	Dahood	-	Present
Babcock	-	Present	Davis	-	Present
Barnard	-	Present	Delaney	-	Present
Bates	-	Present	Driscoll	-	Present
Belcher	-	Present	Drum	-	Present
Berg	-	Present	Eck	-	Present
Berthelson	-	Present	Erdmann	-	Present
Blaylock	-	Present	Eskildsen	-	Present
Blend	-	Present	Etchart	-	Present
Bowman	-	Present	Felt	-	Present
Brazier	-	Present	Foster	-	Present
Brown	-	Present	Furlong	-	Present
Bugbee	-	Present	Garlington	-	Present
Burkhardt	-	Present	Graybill	-	Absent

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1	Gysler	-	Present	McNeil	-	Present
2	Habedank	-	Present	Melvin	-	Present
3	Hanson, R. S.	-	Present	Monroe	-	Present
4	Hanson, R.	-	Present	Murray	-	Present
5	Harbaugh	-	Present	Noble	-	Present
6	Harlow	-	Present	Nutting	-	Present
7	Harper	-	Present	Payne	-	Excused
8	Harrington	-	Present	Pemberton	-	Present
9	Heliker	-	Present	Rebal	-	Present
10	Holland	-	Present	Reichert	-	Present
11	Jacobsen	-	Present	Robinson	-	Absent
12	James	-	Present	Roeder	-	Present
13	Johnson	-	Present	Rollins	-	Present
14	Joyce	-	Present	Romney	-	Present
15	Kamhoot	-	Present	Rygg	-	Present
16	Kelleher	-	Excused	Scanlin	-	Present
17	Leuthold	-	Present	Schiltz	-	Present
18	Loendorf	-	Present	Siderius	-	Present
19	Lorello	-	Present	Simon	-	Present
20	Mahoney	-	Present	Skari	-	Present
21	Mansfield	-	Present	Sparks	-	Present
22	Martin	-	Present	Speer	-	Present
23	McCarvel	-	Present	Studer	-	Present
24	McDonough	-	Present	Sullivan	-	Present
25	McKeon	-	Present	Swanberg	-	Present

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Toole	- Present	Ward	- Present
Van Buskirk	- Present	Warden	- Present
Vermillion	- Present	Wilson	- Present
Wagner	- Present	Woodmansey	- Present

CLERK HANSON: Mr. President, ninety-seven Delegates present, three excused.

PRESIDENT GRAYBILL: Mrs. Robinson, your attendance is noted. Mr. Campbell, you were excused, but you're here.

DELEGATE CAMPBELL: As of 10:00 o'clock A.M.

PRESIDENT GRAYBILL: Very well. The journal may show the attendance and a quorum. Order of Business Number One. Mr. Clerk, have you a report from Style and Drafting?

CLERK HANSON: The Committee on Style and Drafting submits to the convention Style and Drafting Report Number Three on the Legislative Committee.

PRESIDENT GRAYBILL: The Style and Drafting report on the legislature has been submitted and is hereby placed on General Orders. I understand it has been printed, or is being printed, and will be put on your desks within the next hour. Without objection, the Chair would like to move to Order of Business Number Eight, Unfinished Business. I would like to explain to you a little bit about the story in the paper this morning on the HUD funds, because I think it's important that you all understand it. The story in the paper results from an open meeting that the Planning Board had yes-

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terday, and is essentially correct but not perhaps entirely correct. As you know, we have been applying for federal funds for some time and Mr. Baucus has been handling the application, and it has been progressing. We had a major meeting about a week ago with a number of the people, both here in town, and some of them from Denver. We were told that we would probably get some funds. Yesterday, the Planning Board which is the conduit for our funds from HUD -- Housing Urban Development -- got oral verification from Denver, after our application had been put in, that it was likely we would get the funds and that is the source of the story in the paper. The problem is that the convention management does not like to say we have the funds, because we really haven't got the funds yet, and there are still some problems to be worked out. Without boring you with all the details, one of the problems is that HUD funds generally arrive sixty to ninety days after you begin to ask for them by showing your chits. Obviously, that puts us into the summer and it's not going to be too meaningful to us immediately. The problems that we're working out are ways that we can get the money advanced from the state on a payback basis. All of these sort of things have to be worked out and Mr. Roys in the planning office has to be satisfied that this can be done. Mr. Baucus and I met with him last night, and we are still negotiating and working on these problems. I would say that it is likely that we will have the funds

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available, but they are certainly not in our budget or payroll yet. So, I just wanted everybody to understand that. My present plans, unless we get written confirmation from Denver, are to report the budget this week to you in the same manner -- that is with the same total monies -- as last time. However, I would hope that by the next budget report, we would have official written confirmation, and then we would adjust the budget to show the federal funds. I want you to know what's happening. We're not too concerned. I think the article in the paper will solidify everyone's thinking on the matter. The reason it has not been announced by us is that we don't have the money yet. Very well. Before we go into Order of Business Number Ten, I think it might be proper for me to, on behalf of those of us who were able to attend, to personally thank Mrs. Babcock and Mr. Babcock for the very fine social function that we enjoyed at their home last night. Mrs. Babcock, we thank you. (Applause) If I may be allowed a personal joke, I now understand why Betty sometimes comes late. I said if you do the housework in this house before you come, I can see why you'd be late. We'll move to Order of Business Number Ten.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

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PRESIDENT GRAYBILL: Very well. The motion is to move the Convention into Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: The Ayes have it.

(Committee of the Whole)

CLERK HANSON: The following committee proposals are now on General Orders: Natural Resources, Revenue and Finance, Bill of Rights, Education, Public Health, Local Government, General Government, Style and Drafting Number Three. Mr. President.

CHAIRMAN GRAYBILL: Very well. We're on Natural Resources Proposal Number Six this morning. My understanding is that we had adopted subsection one, subsection two and subsection three of section one yesterday as amended. We defeated subsection four. Before we wrap up subsection one, are there any other subsection one amendments?

Mrs. Bates.

DELEGATE BATES: Mr. President, fellow delegates. I would like to move that we add one more section here. I think our chairman has a copy. Would you like to read it?

CHAIRMAN GRAYBILL: Will the clerk please read it?

CLERK HANSON: (Reading) Subsection five:

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CHAIRMAN GRAYBILL: That should be subsection four.

CLERK HANSON: Subsection four, yes. In order to maintain a more healthful environment, smoking shall be prohibited in public buildings. The legislature shall enact laws for the enforcement of this clean air provision. Signed, Bates.

DELEGATE BATES: Mr. President.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: In all sincerity, I truly believe that this could be done and should be done. I understand the health, education and welfare in Washington, D. C. has now prohibited smoking within that building, and many other buildings in the capitol proper. Why should people who do not smoke, have to be subjected to this pollution? Not only that, maybe this should be in Finance and Revenue, because I feel that maintaining an unkeep of our buildings is a terrific cost. Anyone that cleans up after a smoker knows that cleaning must be much more frequent. The pollution in Los Angeles, even though the smog is thick, washes up easier than a room that has had constant smoking in it for a year. It takes industrial cleanser to remove the brown off the white buildings. This is not only for our benefit, your benefit as well. Look at our painting up here. Do you recall how much it cost to renew that into -- so that we could protect it and keep it for a while longer? If you look at our ceilings here, you can tell the effects of the smoke. It hasn't been too long

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since it was renewed. Mr. Chairman, I move for this.

CHAIRMAN GRAYBILL: Very well. Is there any discussion?

Mr. Harlow.

DELEGATE HARLOW: I heartily support Mrs. Bates' motion. I have suffered from the smoker ever since I was a small boy. I used to have to ride on the streetcars back in the olden days. I realize that a number of you feel that this is an infringement on your public rights or your private rights. I feel that it is an infringement upon my good health as well as my private rights to have to indulge in second hand smoke in vast quantities. There's a great deal of sincere thinking on the part of nonsmokers to be able -- or try to protect themselves from this curse, let us say.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman. I think this is also a step toward clean politics. This would eliminate the smoke filled room.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I don't want to dwell on this much, but maybe some of you noticed that I was voting with Cate all the way on this pollution thing. If you had to sit beside all these guys around here -- old Berg smoking rod root, Conover smoking something called "down on the farm", (laughter) and if you could see the mess around this desk,

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you'd know why I'm voting against pollution.

CHAIRMAN GRAYBILL: Mr. Schiltz was next.

DELEGATE SCHILTZ: Mr. Chairman. I'm really just stalling for time so I can get this last one in.

CHAIRMAN GRAYBILL: Mr. McCarvel.

DELEGATE McCARVEL: I rise to support Mrs. Bates in this venture, because I understand the legislature here a couple sessions ago, was thinking of removing that painting back there because the smoke in the room was getting too thick and it was going to ruin the painting. Then they even thought of glassing it in and making it air conditioned. So, maybe she has some merit to her proposal.

CHAIRMAN GRAYBILL: Mr. Drum, would you like to join in the argument?

DELEGATE DRUM: Mr. Chairman. I rise in support of the smokers. It seems to me that those who smoke most, talk less. (Laughter) So, I think in deference to us who are subject to all kinds of pollution, I think we should give that some consideration.

CHAIRMAN GRAYBILL: Mr. Drum, are you a smoker?

DELEGATE DRUM: I don't inhale. (Laughter)

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I know that Mrs. Bates' motion is not facetious in any sense, but I want to remind you all of the famous English writer's statement that,

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a woman is only a woman, but a good cigar is a smoke. (Laughter)

CHAIRMAN GRAYBILL: Mrs. Bates, I'm going to allow you to close, but Mrs. Blend, would you like to --

DELEGATE BLEND: Naturally, I rise in opposition. I would like to point out that if you pass this motion, that you will have to find some other way of promoting the building programs on the campuses of the University of Montana.

CHAIRMAN GRAYBILL: Mrs. Bates, would you like to close?

DELEGATE BATES: Mr. Chairman. In all due respects, this is statutory measure. I do think that maybe in the future, the legislature may provide such a provision. I have a little more trust in the legislature, and therefore, I do not want to put statutory measure in this constitution -- or try to prevent as much statutory measure -- Therefore, I would like to withdraw my motion.

CHAIRMAN GRAYBILL: Do you want a roll call on your withdrawal, Mrs. Bates? Mrs. Bates' amendment is withdrawn. Mr. Murray, since I have no more amendments to section one, would you again move the adoption of section one?

DELEGATE MURRAY: Mr. Chairman. I move that when this committee does rise and report after having had under consideration section one, subsections one, two and three of Proposal Number Six, recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: All in favor of that motion, say

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Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered. Mr. Clerk, will you read all of section two please?

CLERK HANSON: (Reading) Section two, Reclamation: All lands disturbed by the taking of natural resources must be reclaimed to as good a condition or use as prior to the disturbance. The condition or use to which the land is to be reclaimed and the method of enforcement of the reclamation must be established by the legislature. Mr. Chairman, section two.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move that when this committee does rise and report after having had under consideration section two of Proposal Number Six, it recommend the same be adopted.

CHAIRMAN GRAYBILL: Does anyone wish to speak for section two before Mr. Delaney makes his amendment?

Mrs. Cross.

DELEGATE CROSS: Mr. Chairman. I would like to make a statement on section two. This section on land reclamation deals with another element of life, and that is the land itself. Again, I reiterate as I did yesterday and a number of

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times before, that Montana has reached a point of decision. Do we or do we not act to protect our land so that it isn't destroyed for a thousand years to come? On my desk, and you can all see it here, is a file of clippings relating to strip mining. Ninety-five percent of them deal with strip mining in Montana and the activities of strip mining companies in this state. They go back to the year 1968 about the time that strip mining was being revived in Montana. This method of coal mining was negligible in that year. Now, we have coal trains going out of this state at the rate of three a day. There are at least one hundred cars in each train and each of these trains contain ten thousand tons of coal. I know that this is so because I have watched them go through Glendive, and I have also taken the time to count them. At night, I can tell that a coal train goes by because of the sound of the rails. The weight is so heavy that there is a zing to them. You can tell these trains are going through just by listening. Anybody who lives three blocks away from that train can also feel the reverberations which have been, at times, equivalent to the earthquake tremors that have happened in Helena, and the shades on the windows shake. In this file, which I have before me, are two studies which have been made by the United States Department of the Interior. This one is called surface mining and our environment and was printed in 1967. This one is called the study of strip and surface mining in Appalachia

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and that was printed in 1965. If you were to look at these, you would find them of intense interest because this is what Montana is going to look like if the strip miners have their way. These studies were made at a time when the poverty in Appalachia was so intense that they decided to find out why. It was also at a time when a great deal of federal money was being poured into Appalachia to counteract this poverty, and they found that no matter how much money they poured into that section, it didn't do very much good. The process of strip mining, which was supposed to be such a great economic boom, happened to turn out to be an economic bust in Appalachia, and Appalachia includes the state of West Virginia which we've heard so much about in the last few days. The geography in Montana is admittedly different, but without land reclamation, the results can be just as disasterous. When we get to debating this article on reclamation, I hope that you will consider it seriously. I'd like to remind you, too, that when we get to the article on water and agriculture, you are going to hear what you already know. That is, that agriculture is Montana's number one industry and that it leads our economy by a wide margin with number two and number three mining and tourism, a good way down the economic ladder. And, lest you have forgotten in these carpeted and marbled halls what good topsoil looks like, and what it feels like, here's a jar for you to come and look at. Now, I wish that I could

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tell you that I had sent back to eastern Montana for approximately five inches of good topsoil to let you know what our farming land looks like, but I can't lie to you. I went out this morning and I picked it up under one of the trees at the place where I had stayed. Because I have so much respect for the soil, I'm going to go and put it back when I'm through here this morning. Also, I would like to remind you that it takes nature one thousand years to produce one inch of topsoil. Earth gets its price for what earth gives us. Believe me, you destroy the land and we topple our number one industry. It's as simple as that. Now, I don't know how many of you have actually seen the spoilbanks in the strip mining areas. As feats of engineering, they are awesome indeed. If you're lucky enough to get past the areas where the tours are conducted and where some experiments in the revegetation of the area go, you'll come back with a feeling of complete desolation. Those spoilbanks are as lifeless as the moon. I know that there are some efforts being made to restore these areas, and I commend those companies for making the attempt. This is long overdue, but their efforts are infinitesimal in comparison to the amount of land disrupted. By the estimates of the United States Bureau of Mines, it has been stated that ten thousand, two hundred seventy-six square miles of land will be disrupted by this method in the United States, and that is an area twice the size of Connecticut. If you do not do some-

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thing about land reclamation, you might as well forget about the sections on water and water rights, and the section on the department of agriculture because, believe me, you won't need either one. Now, I'm very serious about this. I am not a newcomer to this. I've been studying it for a long time. When I first began studying, it was because I was interested in the possibilities of coal development. As the years went by, I became alarmed. I think if we really mean what we say, we're going to do something in this constitution to protect what is so important to Montana, and that is the land itself.

CHAIRMAN GRAYBILL: Mr. Delaney, do you want to be next?

Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman. May I ask Mrs. Cross a question, please?

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Yes.

DELEGATE DRISCOLL: Mrs. Cross, what would be the effect of your section two on the mining operations in Silver Bow County?

DELEGATE CROSS: You know, I was hoping that somebody was going to ask me that. Personally, I don't think that the Berkeley pit is going to be effected. It has been there for decades and I presume it's going to be there for a few decades longer. They have, by their very position in time,

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probably the prerogative to continue its operation, and I would be the last one to say they shouldn't. It is part of the life system of the large city in our state. Man happens to be a very adaptable creature and the people of Butte have adapted themselves to the Berkeley pit. If the time ever comes when this pit will no longer be used, I predict that it will become one of the most interesting, historical sights in the state of Montana, geologically as well as depicting the history of the mining industry. I don't think that's incompatible with what we have in mind. I understand that water has to be pumped out of that pit in its present operation. Well, let's carry the step a little bit further. Let's let it fill up, if the time ever comes when we no longer need it to mine copper, and then Butte can boast of having one of the in-earth lakes of the state. I suspect it would be quite a prize to be able to have a home on the lakeshore. Further, I would like to say that no matter when and what happens as far as the pit is concerned, if the time ever comes when it is no longer useful to the company, that company will leave and any people who are left will have to readjust themselves to these actions and we, as a state, will pay for whatever conversion will happen.

CHAIRMAN GRAYBILL: Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman. I'd like to thank Mrs. Cross but I'd like to ask Mr. Dahood a question.

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CHAIRMAN GRAYBILL: Mr. Dahood, will you yield?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE DRISCOLL: Mr. Dahood, what is your opinion of section two on reclamation and the effects on the mining industry in Butte?

DELEGATE DAHOOD: Mr. Driscoll, I'd like to answer it this way. I think there certainly is a need for a section two, but I think that the manner in which it is worded could have a very disasterous effect on the operation in Butte. Although I want to say this, I agree with Delegate Cross that the intention behind it is certainly good for the state of Montana, but something should be done to protect the industry that we have in our immediate area.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: I, too, agree with Mrs. Cross that mining companies should have to do something about the land they disturb. Coal mining, and I'm not that much of an expert on mines just because I live by them, but coal mining -- strip mining -- is a good deal different from a pit operation. If I understand coal strip mining, the surface is disturbed the same as pit mining, but they don't go into a deep operation. That is, they strip off the coal that might be twenty or thirty feet in depth. The idea behind these reclamation projects, as I understand it, is to put topsoil back where it was and replant the area. Now, with the pit, I

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just have no conception of how that would be reclaimed. Mrs. Cross' statement that they make a lake out of it -- probably there is going to be water in it someday when it is finally abandoned. All of the ground that has been taken out there just isn't in the immediate area. A good deal of it has been hauled down to Anaconda and processed in the mining industry. To fill in the pit, you'd have to disturb other topsoil. There is just no practical way that this could be done that I can see. Maybe Mrs. Cross has some solution to it, but it certainly isn't in a natural development for a lake. The water would be mine waste water, which would be very corrosive. It certainly couldn't be termed a lake. It would be the worst type of water. As it accumulates in there, it would be highly mineral in nature. The copper water that they take out of the mines, that I'm sure Mrs. Cross is talking about, is of such a nature that they dissolve iron into it just by leaving it there. I just don't know. I realize that Mrs. Cross doesn't intend that the mining operation will be disturbed, but that's not the way the section reads. The section reads, all lands disturbed by the taking of natural resources must be reclaimed to so good a condition or use as prior to the disturbance. Now, you certainly can't say that the Butte mining operation in the pit doesn't disturb the earth. That's particularly what it does. In all practicality, there's no way that the Anaconda Company or any other mining company can

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ever reclaim that. When they get finished with the thing, presumptively the Anaconda Company won't be there any more, and who's going to enforce it? There's no practical sense that we start passing a constitutional provision that Mrs. Cross -- As I understood her excellent speech, she said, I can't tell you what to do about Butte, but yet this applies to Butte. I just don't see how we can pass it and realistically expect that it's going to be enforced. There's nothing in here which says that all lands disturbed in the future, it applies retrospectively. There's just no practicality to it that I can see in applying it to the operation of the pit in Butte.

CHAIRMAN GRAYBILL: Mr. Delaney, whenever you're ready, I want to make your motion, but if you're not going to stand, I'll give it to somebody else.

DELEGATE DELANEY: I would like to have it read.

CHAIRMAN GRAYBILL: Very well. Mr. Delaney has -- What do you want this to be, an amendment or a substitute motion?

DELEGATE DELANEY: Substitute motion.

CHAIRMAN GRAYBILL: Very well. Will you read this as a substitute motion?

CLERK HANSON: (Reading) Mr. Chairman. I move as a substitute motion, on section two, page three, lines nineteen through twenty-four of the Natural Resources and Agricul-

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ture Committee proposal, by deleting it in its entirety. Signed, Delaney.

CHAIRMAN GRAYBILL: Very well. Mr. Delaney has made, as a substitute motion, the deletion of section two in its entirety. So, the discussion is on Mr. Delaney's motion to delete in its entirety, section two. Mr. Delaney.

DELEGATE DELANEY: I believe that this reclamation is covered entirely or satisfactorily in subsection three of section one by the words, unreasonable depletion of natural resources. I believe this covers the reclamation and leaves it to the legislature where they can put some sense into the restoration as it would apply to each particular instance. Section two on reclamation does not just state strip mining. It says any land that is disturbed and I definitely read it that it means a small gravel pit that I might have on my ranch that I get a load of gravel out of to patch a mud hole in my road. I read it to include the Berkeley pit. To my mind, possibly they could fill that Berkeley pit with water and maybe test submarines in it or something.

CHAIRMAN GRAYBILL: Mr. Roeder.

DELEGATE ROEDER: I rise in opposition to Mr. Delaney and, in principle, support Mrs. Cross. I hadn't read the reports she referred to. Maybe I don't have to, because I grew up in Appalachia. I don't often think about material goods in this life, but there's one time I wished I were

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wealthy. That's when the legislature meets and when I knew this body was going to meet. I'd like to have the money to take you all back and show you communities that would make Butte look like a garden spot.

CHAIRMAN GRAYBILL: Mr. Joyce is next.

DELEGATE JOYCE: Mr. Chairman and fellow delegates. I rise in support of Mr. Delaney's motion to delete for this reason. It illustrates, at any rate, where the philosophy of Mrs. Cross as she puts forth so eloquently in the editorial that she wrote as the committee chairman, and which the chairman incorporated into his speech to this convention, and at the same time, he also incorporated into his speech the philosophy that I came to this convention with. My philosophy is this, that this body is not a legislature, notwithstanding that a good many of the delegates think that it is. It seems to me that what this Constitutional Convention should do is to write a constitution that will structure the government, that will allow the people of Montana to meet the problems that arise in the future, and that we are not met here to solve any current problems and to impose our will or our pet ideas on generations yet unborn. Let the people of Montana solve their problems in the future. I think we've made a giant stride in that connection by enlarging the ability of the legislature who, after all, represents the people, to meet the problems as they arise. If you say the legislature

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1 won't do it, as we've heard a hundred times here, I submit to
2 you that when the legislature won't do it, it's because the
3 people of Montana don't want it done. I submit, if you think
4 the legislature is controlled and is corrupt, then the place
5 to fight these battles is in the public forum, to run for
6 office, to get elected, to come up to the legislature and put
7 your ideas into force. But, it seems to me, that it is the
8 height of foolishness to write into a constitution that all
9 land must be reclaimed. Lands should be reclaimed, but it
10 ought to be worked out on a balancing of the various interests
11 as times change. The legislature should be able to enact laws
12 that require reasonable reclamation of the land. If they
13 pass a law in one session that is too restrictive, that actu-
14 ally doesn't work out in practice, then in the next session it
15 can be changed, and so on in the history of Montana, the people
16 can balance the various economic interests; the interests of
17 whether or not it's better to mine, or whether or not it's
18 better to prohibit mining in some other interest. But, to
19 write into the constitution a provision that imposes for all
20 time the ideas of the people in this convention, seems to be
21 an improper way to draw a constitution. We have a legislature.
22 We have freed the legislature to act more responsibly and ef-
23 fectively for the people. Let us leave the solution to all
24 the problems to the future to be worked out by reasonable men.
25 CHAIRMAN GRAYBILL: Mr. Ask.

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DELEGATE ASK: Mr. Chairman and fellow delegates. I rise in support of Delegate Delaney's motion to delete this section. First, I'd like to say that I'm glad the smokers are catching hob this morning rather than the lawyers. Maybe we can keep that going all day here. I am very concerned about this section, and I don't say this because I'm against reclamation. I feel the way this section is worded that it is going to stop the removal of a lot of natural resources in the state of Montana. It says natural resources; it just doesn't say mining. Natural resources would cover timber; it would cover a lot of agricultural activity; it would cover hard rock mining and strip mining. I submit that's very broad. I think all of us feel that we have to have good reclamation laws, but we also have to remove our natural resources. We cannot get along without coal. They say our gas and oil supply is being depleted. It'll be practically gone in a few years. We're going to have to rely on coal. We need our other ores or we'll be unable to live. I submit that with this section, this would stop a lot of mining and a lot of natural resource work in Montana, such as timbering. When this stops, the employees have to leave. What are we going to have in Montana? Are we going to have a playground here? Are we going to live on the east or west coast and come back here in the summer to play? I submit that we have to be realistic about this. Now, if you'll read that first section, it

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says, all lands disturbed by the taking of natural resources must be reclaimed to as good a condition or use as prior to the disturbance. To me, that means that there are certain areas that could probably meet these requirements, but I submit there are a lot of areas that could not. The only way I can get this example across is use an example from my own home area. As you know, Roundup and Musselshell County has a lot of good quality coal. It's probably a better quality coal than much of the areas of eastern Montana. It has been a coal mining town for -- that's why it was started there in 1908. The Milwaukee railroad went through there and the first big mine was opened for the railroad. The two big mines closed eight or ten years ago because the costs of underground mining became prohibitive and they couldn't compete in the open market for the price of the coal, so they just closed. There were four, five or six small family or partnership mines that kept running. They still sell a lot of coal in eastern Montana and some in western Montana clear into the Dakotas for home use, for heat. It's a good quality coal and the sulphur content is very low and it meets all the emission standards of even eastern states, if you burn this coal. So, it's a good quality coal. We had four or five of these small mines operating and about two years ago, the federal government passed the Mines Safety Act. Incidentally, these mines had a very good safety record, but under the requirements of this new

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safety act, these small mines could not meet the requirements to redo their underground tunneling to meet these standards, and they're starting to close. Some of them have already closed. There's one or two of them that are running this winter, but they are being subject to fines. They'll have to pay their fines, but when they get to the end of -- They have customers to service and they're going to close. One of the partnership mines employed eight or ten men felt there was a need, and the people were after them to continue to mine coal. They can't go underground. They can't afford it. So, they had an area there right close to where their mine was located to strip. So, they went into this and, incidentally, we have very good reclamation laws that were passed by the last legislature on the books. Maybe they're not the best; maybe we can improve them. But, under these new laws, they had to go to the state here for a permit for strip mining. They spent half the summer -- the managers -- meeting all the requirements of the state. They have to submit a plan and a bond. The engineer has to draw what it's going to look like when they're mining and when they get done. This is submitted to the Land Board for their approval. I think two or three plans were submitted until they finally got one that was approved. And the tremendous cost when this coal is forty or fifty feet under the ground -- this is the closest we have in our area -- to get to where you can mine one acre of coal,

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and they feel that two or three acres of coal a year is all they will need. It's five feet thick. So, they've done all this and they couldn't afford to buy the machinery so they contracted out the removal of the dirt. They had to go into hock clear up to their necks to get enough money for the contractor to remove this topsoil to where they could get down to mining. They reached there, and they started mining and everything is working out fairly good. It's a costly process but they think they are gradually getting it to the point where it'll be the same cost as it was underground, so the price of coal won't go up and they can meet the needs of all their customers. You know our Citizens' Corps -- We sent all these proposals to them and one of the Citizens' Corps in Roundup gave this Natural Resources one on reclamation to these mines there just to see what they thought about it. I got phone calls when I was home over the weekend. They had read this provision and they feel that they are meeting the reclamation standards -- or this one mine -- of the state at the present time. They feel with this provision in there, that they would have to stop. They couldn't meet these requirements. They've spent a lot of money and they're mining the coal for sale to their customers. The coal is needed. One of the other mines that's ready to close is ready to start this project. They can also strip mine adjacent to their mine. They feel if this particular provision is in the

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constitution, they won't even attempt it. I think we're closing down a little industry in our area because of one section in our constitution. We can say, what's forty or fifty mens' jobs or a small business? What difference does that make? Let them go work somewhere else. Well, that's not the idea. Number one, we're losing the business, but number two, we're losing our natural resource. We need this coal. Of course, this thing is going to apply to the big operators also. I don't think we want to close down our mines. We need this coal. We're going to need it in the future. But, let's pass good reclamation laws that they can meet. The reclamation standards on these pits are, so far, three to one pitch and they're going to plant grass and trees again. No one knows whether they will be to exactly the same condition. They're also working with the state agricultural department at Bozeman to find grasses and other conservation methods to restore these pits. I think they're working real hard on it and I think they are going to accomplish the same purpose with our reclamation laws, rather than have something in the constitution that's going to close down all mining. Mr. Kamhoot, I think, lives in an area where the land is a little flatter. Maybe they could meet these standards, but we just don't know. I don't think we can put anything in here that's going to close down mining. I think this also covers timbering and agriculture. If we want a

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playground in Montana, that's what I think we're going to get. If we leave it to the legislature, let them pass reasonable reclamation laws, we're going to get where we want to go without closing anyone down. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I move that as a substitute to the motion now before the convention, that in line twenty-one, page eight, the words after as, prior to the disturbance period, be deleted and in lieu thereof be substituted the words, is possible. So, the line would read, condition or use is possible period, the condition. Then the language resumes.

CHAIRMAN GRAYBILL: Mr. Romney, the difficulty is that we have a substitute motion to delete and so you are again, deleting a motion to delete. I will make a note of your motion and allow it after we've disposed, one way or the other, of the motion to delete.

DELEGATE ROMNEY: May I speak?

CHAIRMAN GRAYBILL: You may speak but not on this motion at this time, unless you're going to speak on the motion to delete. Yes, you may speak.

DELEGATE ROMNEY: The subject is quite general.

CHAIRMAN GRAYBILL: All right. My point is if we can dispose of whether we're going to delete it or not, then we can amend it, or we can come in with other amendments. I

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happen to have on my desk before me, other peoples' amendments in the event Mr. Delaney either wins or loses. I'll be glad to put you in the line. The point is that you can't amend a motion to delete by adding in some more words. Go ahead.

DELEGATE ROMNEY: Therefore, I'll direct my remarks to Mr. Delaney's motion with mine held in limbo. I think, as Delegate Joyce indicated in his remarks, that this matter is distinctly statutory in nature and should be handled by the legislature. Indeed, it has been handled by the legislature for a number of years, and indeed, it has been handled by the legislature very inadequately in my opinion. However, I think that is a natural field for it. There are people that say that that is where it should be entirely, but I do not concur in that view. I think that the constitution should have some phraseology such as is contained in section two as I hope to amend it, so that there would be a back-stop for legislation concerning the matter that we have under discussion. The reason that I feel this way is that for a long time, I have been viewing this coal disturbance over in eastern Montana. I've been over there and looked at it. I introduced and worked for legislation in the legislature. We currently have a tax on coal, which is partially used for reclamation of the lands that are molested by the industry which is removing the coal. Now, I think it's a splendid thing to have an industry there removing the coal and providing the low sulphur content coal

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which is used by the electrical energy industry in large part, in generating electricity to be used by the American people. Unfortunately, to a large extent, this coal is being taken out and transported out of state in these trains that Mrs. Cross refers to -- in large trains and carrying millions of tons to Minnesota, Illinois and other places where the generating industry turns the coal into electricity. It was my view in trying to raise taxes on this, that this resource is a natural resource which, once removed from the dirt in Montana, becomes lost to us forever. There are those who say it provides a lot of employment and money, but the trouble is the employment is very meager, and the money that is realized by the state is almost nonexistent. I think that the coal should be more highly taxed and, consequently, the state could then receive considerable money from it for our treasury and we need that. I would rather that the coal slumber under earth forever than have that natural resource taken from the earth and transport it out of the state for use in Minnesota and Illinois and other places, and the state not realize anything from it. Remarks have been made by Delegate Ask and, I believe, Mrs. Cross, about efforts to reclaim. The reclamation, as Delegate Ask explained, is in an experimental stage. Whether or not the grass and trees will grow upon these restored areas is a matter that we do not know now, but there are being efforts made to take care of it. The trouble is that

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the money realized from the present tax may not be enough, although experts on the matter seem to concur that it will be adequate. So, that is something that experiments have got to develop. I feel that we should leave it to the legislature to determine just what the tax is going to be, and what portion of that tax is going to be used for reclamation. We ought to have something in the constitution as a backstop for this tax legislation, which is really reclamation legislation. Now, it is not only the coal, as Delegate Ask said, that is involved in this. There are other things. For example, there is the timber in western Montana. I come from an area which was heavily timbered. It has been cut for years and it has recently come to the attention of the public that it has been overcut. Those of us who have been crying about this in the wilderness for a long time were considered oddballs, but now there is a general realization that the timber has been overcut, that the selective cutting process has been overdone, and clear cutting has taken a much heavier toll than the natural resource can sustain. The immense tracts, sometimes as high as a thousand acres, are sheered off just like you would run a lawn mower over your lawn until all the grass has been taken off. Trees fifty and seventy-five years of good size, which one day might make a mature piece of timber, have been removed in the clear cutting along with the mature timber, which they can use for turning into lumber. There are many of us who

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decried this method and desired that the multiple use, sustained yield, selective method of cutting be used. This has finally become so apparent that the forest service has restricted sales of timber in order that it be handled this way. They also -- If you go into these areas, you'll find that many of them are absolutely deserts as far as use is concerned. Too, the forest service is engaged in a replanting program, but that is not keeping step with the cutting program. As a consequence, we are falling behind. Here is another place where reclamation must be taken care of. The trouble is that most of it is on federal land and it's difficult to reach through legislation. The point is if we have a back-stop for reclamation in the constitution, and people are aware of this situation, we are making some strides in the right direction. While I think that the verbage in the section two is inadequate as I would amend it, if I have an opportunity, I think it is too stringent as it is now before the Delaney motion. For example, must be reclaimed to as good a condition or use as prior to the disturbance. Now, all you have to do to realize that this is an impossible situation, is to go and gaze into the Berkeley pit, to go and look over some of these devastated areas in our forests where clear cutting has exacted its toll. All you have to do is go into the area in eastern Montana where the Knife River Company has been extracting coal through the strip mining process, or down in Roosevelt County where

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the Western Energy Company has been doing the same thing. You can't get it back to the same condition it was before, and there's no use placing idle verbage in the constitution saying that we will. There is use in placing verbage in the constitution which expresses the necessity of trying to reclaim it to as good a condition as is possible. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Anderson.

DELEGATE JOHN ANDERSON: Mr. Chairman, members of the assembly. I speak on this somewhat reluctantly. I am very sympathetic with Louise Cross' remarks in regard to this, and I'm sure that we must have something in regard to reclamation as one of the more important things as far as the future of our state. I will have to hold with Mr. Delaney in regard to this -- deleting it. I like to be consistent. I've upheld in committee that this is purely a statutory matter, and I feel that as far as the constitution is concerned, as Mr. Delaney has pointed out, that the section one and section three of the article that was adopted yesterday, I believe takes care of it as far as the constitution is concerned. When it comes to reclamation, I think it has to be set up statutorily because it covers such a wide area. For instance, I'd like to call to your attention that mining is not the only thing that is disturbing our land. I'd like to point out in the figures that I have here, that to date that

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mining has disturbed practically twenty-nine thousand acres of land in the state of Montana, whereas the interstate system of roads has disturbed forty thousand acres already. So, I merely point this out, that it would be impossible as I see, to put anything in regard to reclamation, except to direct the legislature to do something in this direction. I feel that the legislature has already made a real fine start in the last session of the legislature. It has done many things in regard to our environment. I note that they have passed legislation in regard to strip mining and they also have passed an act requiring the licenses of persons engaged in strip mining, which Mr. Ask called to your attention. I will have to support Mr. Delaney's motion to delete. Thank you.

CHAIRMAN GRAYBILL: Mr. Lorello was next.

DELEGATE LORELLO: Mr. Chairman, would Mrs. Cross yield to a question?

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Yes.

DELEGATE LORELLO: Mrs. Cross. I attended the Romney hearings plus some of the other public hearings that you had, and I heard statements in there that reclamation and the environment and the lunch bucket are compatible. Would you comment on that please?

DELEGATE CROSS: Yes, I'd be happy to and these will also be comments that will be directed to what Delegate

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Ask has stated. First, I would like to say that I don't consider this a pet idea. I think every one of us in this room are affected by it, either presently or will be. Secondly, I don't think that requiring reclamation of land is going to stop anything. I think it will just require some responsibility on the people -- on the part of the people -- who undertake it. I would also like to tell you that if the cost of doing any other type of mining is so great, then perhaps we should wait until we can come up with a method that is less costly both in taking out the natural resources and restoring the land, because in the long run, Montana won't lose a thing. The natural resource will still be there. Instead of passing on the bill for reclamation to a future generation, we'll be able to pay some of the costs ourselves. The next comment I'd like to make -- perhaps you're not aware of it -- but there is quite a strong movement in the United States to prohibit this type of mining altogether. Unless something feasible can be done to make the destruction less obvious, I predict that this will happen. If you'll recall, yesterday I mentioned the fact that no permits were issued in West Virginia after this breaking of the dam for more strip mining. This doesn't mean that the previous damage will be obliterated. The people of that state are going to have to face it and are going to have to pay for it. Economically, you might be interested in knowing that this strip mining is done by extreme-

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ly large, efficient machines. The men that run those machines are highly skilled and highly trained, and I don't think that there are very many employed for the mining that is done. That means, not very Montanans get the job. The big amount of money is made at the point of delivery where the coal is taken and used, and we are not delivering that coal to Montanans. It's going out of state. It's going to the west coast. It's going to Minnesota. It's going to the ports in Chicago. I also understand that from there, it is taken overseas. Now, if that provides jobs for Montanans, I'd like to know how.

DELEGATE LORELLO: Thank you, Mrs. Cross. I would like to remind Mrs. Cross and some of the others, that in some areas, we can live with some smoke and some dust and, yes, even with some large holes like the Berkeley pit, and we can't survive without them. Thank you.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I have here before me on my desk, the report from this committee. It is signed by every person on that committee. There's no minority report attached with it. I have heard from Mr. Delaney, who signed the report, who moves now to delete it. Mr. Anderson, I would like to ask if Mr. Brazier would like to yield to a question.

CHAIRMAN GRAYBILL: Mr. Brazier.

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DELEGATE BRAZIER: Yes.

DELEGATE HARPER: As a committee member, Mr. Brazier, would you answer yes or no? Do you support this majority proposal?

DELEGATE BRAZIER: I'm glad you asked that question, Mr. Harper, because I was going to clarify the record. I support Mr. Delaney's position and I would call to your attention a misprint in the report. You will notice under proposal number two, on the total it says six Ayes and three Nays. When it starts specifying who was a Aye and who was a Nay, it makes a mistake. I was a Nay.

DELEGATE HARPER: You do not support it. Thank you. Would Mr. Siderius yield to a question?

DELEGATE SIDERIUS: Yes.

DELEGATE HARPER: Mr. Siderius, do you support the majority proposal?

DELEGATE SIDERIUS: I do.

DELEGATE HARPER: Thank you. Mr. Kamhoot, will you yield to a question?

DELEGATE KAMHOOT: Yes, I'll yield.

DELEGATE HARPER: Mr. Kamhoot, do you support this majority proposal being offered to us?

DELEGATE KAMHOOT: My name is on the majority proposal. We need some type, I think, of guidelines that are a little more than laws made by men, as we go from year to year.

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This section we're talking about is entirely too broad. We can just not apply the same practice to reclaiming coal land as we can to reclaiming hard rock mining. I just don't like the section. I was never well satisfied with it, but we definitely should do something to indicate the consensus of this body, that we don't want to destroy five hundred thousand acres of Montana land for the purpose of delivering natural resources, which we should deliver. The people of the United States are entitled to a little better life by having electricity, appliances and things that are the product of this, but not at the expense of completely destroying Montana. So, therefore, I signed the report, but I'm not satisfied with that one section. I hope we can get on here and see some more versions of it and maybe there will be something that I can support.

DELEGATE HARPER: Thank you. Mr. Gysler, would you yield to the same question? Do you support it?

DELEGATE GYSLER: Yes, I yield. I feel that those of us who voted for this language in our committee had a couple of things in mind. Number one, we had a feeling that if our environmental article went through in good shape, probably this would not be necessary, and maybe we could delete it. However, if it didn't go through with the wording we had, particularly in subsection three, then we very definitely had to have something. I wanted to amend this article in committee

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to make it possible for my friend, Henry Siderius, to keep his gravel pit on the farm, but I couldn't figure out the wording, etc. If you will recall -- I don't know if you were at the meeting or not that Charles Lindberg had with the delegates the evening before he spoke to us here. This article was read to him and he said, I think you've gone too far. Basically, this is my stand. I think we probably ended up with something we can't live with. I doubt that we can live with it, but I'm for a reclamation article.

DELEGATE HARPER: You're not for this. Thank you. Mr. McNeil, would you yield to a question?

DELEGATE McNEIL: I yield.

DELEGATE HARPER: Do you favor this majority proposal?

DELEGATE McNEIL: I wrote it and I support it, although I recognize it's probably too strong.

DELEGATE HARPER: Mr. Rebal. Mr. Rebal? He's not here.

CHAIRMAN GRAYBILL: Not here.

DELEGATE HARPER: Mr. Rebal, would you just nod yes or no whether you support this majority proposal which you signed?

CHAIRMAN GRAYBILL: Mr. Rebal is getting a little ammunition for you.

DELEGATE REBAL: Thank you. I think I'm going to

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support the majority like the majority is going now. (Laughter)

DELEGATE HARPER: Thank you. That's a good answer. Mr. Chairman, I really am concerned. All day long yesterday, we heard this same committee stand and support each other and say leave it to the majority. We worked long and hard, and not even one word should be changed. You would never realize that for every hour we spent here talking, the committee has spent days perfecting this language. Everything is important. We must leave it exactly the way it is. I submit to you, that this committee did not act in good faith with this group. We now have before us a proposal, which only two people out of the entire committee, have unqualifiably said that they support. Yet, we have no minority proposal here. I don't know what committee acts are supposed to mean in this conference, if it isn't supposed to be an act of good faith on the part of the committee that brings it in. If the constitution doesn't state principles, what's it supposed to do? If land and water aren't basic issues that we ought to deal with in the state of Montana, I don't know what we ought to deal with. If the people of Montana didn't send us here to protect their basic rights, what did they want us to do? As a citizen, and ever since we moved to Montana years ago, I heard this was the issue -- the state vs. the company. I'd never thought I'd be part of a group where we came right up against it, as apparently we are right now. I hope we will leave some kind of

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a properly worded article on reclamation in here, because I am certain that they will say exactly the same thing on water rights. If we shouldn't say anything about land, we probably shouldn't mention anything about water.

CHAIRMAN GRAYBILL: Mr. McDonough was up next.

DELEGATE McDONOUGH: Mr. President. I really think we should consider in this article as to who actually owns the coal in eastern Montana. Most of the coal over there is owned by the Northern Pacific Railway Company and the federal government. The railroad preserved quite a bit of it, especially in the south along their right of way. Even under the old reservation before 1913, they reserved coal and iron. After 1913, they reserved other metals and coal. The federal government starting in patents issued after 1905 reserved the coal. I just venture a guess that at least seventy or eighty percent of the coal in place is owned, in southeastern Montana, either by the railroad company or the federal government. Now, what do these reservations say when the railroad conveyed it out or the government patented it out? I think this is quite important to Mrs. Cross' motion. The railroad reservation say that they will only pay you for the surface so used. If they take a hundred acres out of your ranch, or six hundred and forty acres, they're going to pay you the market value of that surface which they used. They don't pay the depreciation to the rest of the ranch for digging this coal,

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and you get no royalty relative to the coal. Now, the federal government in the Stock Grazing Homestead Act of about 1917 says essentially the same. The clear reservations made by the government under the acts of 1905 and 1906 say nothing about payment for the surface. They do, however, say payment for the improvements. Actually, I think the people in Montana have a very valid interest in putting this in their constitution, that the land will be restored to the condition provided in section three. That might be the only thing they can get out of this land. They possibly could get no royalty. They could get some damage payment for the land actually taken, and the individual cannot get any damage payment for the damage to the balance of his property. I think we all should support this section two for that reason. In addition, one acre of ground with a twenty-seven foot vein will produce, if my calculation is correct, about forty-five thousand square yards of coal. The selling price for coal is about two dollars a ton. They have costs in producing this certainly, but the cost of reclamation even at a thousand dollars an acre, would be very small compared to the eventual loss of all this acreage for any taxable use to Montana. In addition, most coal leases, if they are owned by private individuals, have a royalty payment of five, ten and fifteen cents a ton. We all know inflation, and most coal contracts have an open end on the thing that they can renegotiate the price for coal. Most royalty

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contracts don't. So, if you sign up for fifteen cents a ton now, in thirty years, the fifteen cents may only be worth the same as five. So, there's no question about it. The coal companies can put in their price the proper reclamation of the surface of the land when they're digging it up. Thank you.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President. Reclamation of land is needed, but the laws regarding the reclamation should be carefully thought out before writing them. The construction industry could be adversely affected if these laws were enforced strictly as this article has them written. Many gravel pits are needed for road construction. It's nearly impossible to restore them to their original condition. The highway department has, for a long time, been aware of this and their environment problems are being solved and have been solved for the last few years. They do require sloping and shaping and beautification of these pits, but they cannot restore them to the same condition as this article requires. Many pits are now made into very nice camping areas. The deepest part of the pits are made into fishing and swimming pools in many places with the help of the fish and game commission. Quarrying in some areas, requires the taking of thousands of yards of hard rock, usually from ledges. Naturally, these ledges are being pushed back, but the shape of the quarry is practically the same as when you started, but you cannot restore it

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to its original condition because of the taking of the rock from its original place. The face of the ledge could not possibly be put in as good condition, to quote, as the article requires. Many acres of strip mining ground can easily be sloped or shaped into better condition as far as the use is concerned, than the rough areas are now. I believe that this article should be deleted and the matter left to the legislature.

CHAIRMAN GRAYBILL: Mr. Blaylock was up.

DELEGATE BLAYLOCK: Mr. President. I resist this motion to delete. I have a great deal of sympathy for the viewpoints put forth by Delegate Ask, as far as working people are concerned trying to make a living. I don't think we have to delete this whole section for these reasons. I think that if we defeat this motion to delete, and if this language is too broad, as reasoning people we can amend this to where we can live with it and where it is reasonable for the state of Montana. I don't think we should delete it in toto.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I think perhaps I should respond mainly to Delegate Harper. To start out with, as the cowboys say in Powder River County, touche, may be the proper word here. I don't blame Delegate Harper for thinking that those of us that he included in the majority, who are switching sides here -- I think we have more inform-

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ation. It's a different situation than it was. I will point out to him that to start out with, we had, we felt, the strongest environmental bill of any state in the United States. We didn't know how that would survive. Delegate Harper -- if he had his way, it wouldn't have survived. Now, it has survived by very close votes, so this lessens the need perhaps for the section we're talking about. Another thing is that regardless of what we do here, we cannot apply it to federal land. Most of our coal is either on BLM land or indian department land. Our thinking was that if we could come out with a pretty good guideline, if you please, perhaps the indians would accept this. They would write their own. This would be fine. Since that time, I have had word from Congressman Melcher's office. John Melcher is a neighbor and a friend of mine. He is on the Natural Resources Committee of the United States Congress and that committee is attempting to draft some federal regulations that will cover the strip mining of coal land. Now, it's certainly in this area that any reclamation should be is with a federal bill. Then, it will cover all states. One won't have an advantage over the other on account of cost. It'll be distributed properly the way it should be. It'll also cover the federal land. It will cover the indian land. It will cover the state land, and it will cover the private land. So, in view of that is, I think, the reason I'm not speaking to the other members, but this is

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my primary reason of feeling that perhaps this section isn't what we need because it's too inclusive as I've said before. You cannot reclaim hard rock mining land the same as you do coal land. I will reiterate again, that I certainly want to set some guidelines and not depend on men to protect this Montana land. I can remember when the present coal strip pits -- the old ones that the Northern Pacific left in such a bad way -- through some of those years, that land wasn't worth fifty cents an acre. Why should we spend money to reclaim it? Get the coal out, sell it and forget about the land. Well, as we all know, that isn't the situation now. There's a great move on now. The land is very valuable. Let's reclaim it. This is fine. We should. But, what's going to happen twenty-five, fifty years down the road? Maybe we go into another one of those drouth periods. The land becomes valueless again in the minds of those people. Maybe these people sitting over here in Helena that are making the decisions on these contracts probably would be forced by the people, through the legislature, to again say this land is valueless; let's get the coal out and sell it and forget about the land. These are the things that bother me. I would like to see something locked in so that we're not governed by men, but by laws, when we're talking about probably five hundred thousand acres of Montana land which has coal under it. I'm not talking

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about hard rock mining. I think a federal bill would be the proper one. I'd rather leave it to the legislature at this time and see if the Congress of the United States doesn't come out with a federal bill. I think Senator Metcalf also mentioned that somewhere when he was here, and that will cover all of the land and not piecemeal. Thank you, Mr. Chairman and Mr. Harper.

CHAIRMAN GRAYBILL: The Chair intends to recognize the rest of you, but we're debating the issue of Mr. Delaney's motion to delete. After we've had a vote on that, regardless of how it goes, we can either amend or add. Mr. Swanberg, you were up next.

DELEGATE SWANBERG: Mr. President. It appears that the legislature has anticipated this in this matter. I refer the body to section 50-1019 of the Revised Codes of Montana, which was passed in 1971. This is the beginning of a long law on open cut and strip mining land reclamation. I will read section 50-1019. It is the policy of this state to provide for the reclamation and conservation of land subjected to open cut or strip mining and thereby to preserve natural resources, to aid in the protection of wildlife and aquatic resources, to safeguard and reclaim through effective means and methods all agricultural, recreational, home and industrial sites subjected to or which may be affected by open cut or strip mining, to protect and perpetuate the taxable

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value of property, and to protect and promote the health, safety and general welfare of the people of this state. There follows after this a number of sections which would make this law effective. We have another law on the books passed in 1971 which has to do with dredge mining. Section 50-1101. It is hereby declared to be the policy of the state of Montana to protect its lands, streams and watercourses from destruction by dredge mining and preserve the same for the enjoyment, use and benefit of all of the people, and that clear and unpolluted water in the streams, rivers and lakes of Montana suitable for recreational, domestic, industrial, commercial and agricultural purposes is in the public interest. This section also precedes five or six pages of law concerning the implementation of that purpose. It would seem to me, therefore, that the legislature has already taken action on the matter. I question whether we, at this time, with the limited amount of time that we will have here at our disposal, should second guess them. I support Mr. Delaney's motion for deletion.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman and fellow delegates. For your information and for Mr. Harper's information, the minority position on this question was, let's rely on subsection one. It fully covers the matter -- excuse me, section number one. It fully covers the subject matter in subsection three, and let's delete proposed section number two. This was a

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minority position and we drafted a proposed comment for our report, and we were ruled out of order by our chairman. That explains why you don't have any comments. Now, one other thing. I think most everything I wanted to talk about has been covered, but for your information, during our deliberation, we were addressing ourselves to the matter of coal. It came to our attention that if we did that, and confined ourselves to coal, we would find ourselves in direct violation of the Fourteenth Amendment to the United States Constitution. So, that explains why we expanded the subject matter. We got into difficulty because now we take in everything relating to the exploitation of resources. What we're doing in this act is making a lot of innocent pay for the assumed future sins of a few, which is unfair, and I can readily see that in individual cases, the proposal before you is going to run afoul of the Fifth Amendment of the Federal Constitution. To repeat the comments of Mr. Swanberg and others, and what I've said earlier in this convention, one way to tell whether it's legislative in subject matter or not, is whether the legislature has acted on the subject matter. It has done this regularly in the immediately preceding sessions and I am confident it will do more in future sessions as it gains knowledge. Let's not try to be a super-legislature. Let's leave it to the legislature to do those things which are properly within its province. Thank you, Mr. Chairman.

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CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President and fellow delegates. About twenty-five years ago in the south fork of the Flathead, a forest fire wiped out several hundred acres of very fine trees. Today they call it the Scorched Earth Experimental Forest. Across the road from this forest, it has grown back as nature would allow it. About ten years after the fire, the forest service went in and thinned these trees to where the trees could grow. The trees that came up after the fire, grew about as thick as the hair on a dog's back. After the thinning, the trees have grown. Today, ten to fifteen years later, those trees are growing at the rate of five or six hundred board feet per acre. In a natural forest, they grow about sixty board feet per acre. In our Flathead area, the private industry, and when they're logging even on government lands, there have been a lot of clear cuts -- a few of them maybe not so good -- but they've tried to clear areas in a manner in which the trees would replant themselves. In many areas they do selective cutting, but the forest service in the Flathead, our private timber people up there, are doing a wonderful job and have been for many years practicing good forest habits. With the laws that have been passed recently on the burning of things and the air pollution, even our state board of health has a man up there, Jack Dodd, who tells the private landowners and wherever there has been cutting, when

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they can burn, the proper time for burning. It's nature's way, as most of you know, and was before man came here, to burn tremendous areas of land -- uncontrolled forest fires. We've had them go through the Whitefish area, that whole area, in the 1909, 1914, 1919 and the whole thing was wiped out. Now, in order to create stands of timber, and especially where you see the lodge pole growing so very thick, it requires a scorched earth policy you might say, or a scorched earth -- a very hot -- fire to germanate the seeds that sometimes lay there for a hundred years or more. Of course, in the clear cuts again, they have used the natural terrain, and in some places they have made mistakes. But, for many years we've been practicing these things. You may recall a few years ago where they had sixty experimental fires up in the north Flathead country, where they took ten-acre patches of timber and, after the logging was completed, they had these fires at different times of the year to find out just how the earth would replenish and reseed itself. I believe that our legislature has made a good start toward doing these things. I don't think we have to be controlled by a lot more laws and things. I think that industry itself is doing a good job. We should leave this to the legislature. Therefore, I support Mr. Delaney's motion to delete this article two. It can make too much damage for our future generations. Thank you.

CHAIRMAN GRAYBILL: Mr. Foster.

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DELEGATE FOSTER: Fellow delegates. I can't believe it. I really can't believe it. I know I came here as an idealist, but I didn't expect to see what happened -- what is happening now. If you delegates ran on the platform of supporting the company, I wonder how many of you would have been elected. I ran as an independent, and I had many people ask me, do you support the company or don't you? But, to those of you who ran as democrats, I can't believe the number of you who are supporting the company position. I refer back to Delegate McDonough's remarks because they're right to the point. This is strictly a company issue. Dragging in the gravel pits is almost absurd. Dragging in the Berkeley pit is almost as bad too. All you delegates know that there is not going to be anything to close the Berkeley pit in this section. You good democrats in Butte that support the people, and you vote for the company, I guess that's the way of life or something. I just can't understand it. As a good independent, I've certainly been educated on what happens in the course of politics. I rise to oppose the motion of my fellow delegate from Fergus County, because I know the people from Fergus County don't support the company. I rise to explain my vote, because my good friend, Jim Felt, had to leave and we'll both be absent on the vote. I strongly oppose the motion to delete. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Robinson.

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DELEGATE ROBINSON: Mr. President. While Mr. Brazier and Mr. Swanberg and Mr. Jacobsen were quite eager to praise the work that the legislature has done, I'd like to point out to you the problem that I have contending all along. This act passed by the last session of the legislature, the Dredge Mining and Land Preservation Act, was declared unconstitutional. On the very basis that we discussed another day, the same people that voted to keep that title provision in -- the one subject title provision -- are the ones voting to delete this section. This good bill passed the last legislative session, and was declared unconstitutional because it mentioned only dredge mining, and didn't mention sluice mining. The whole intent was wiped out. We have made this possible in our legislative article to do this same thing again. It's time to take a stand now and decide what we're going to do in terms of the environment, and quit passing the buck and hoping that the legislature will do something that, in other areas, we prohibited it from doing.

CHAIRMAN GRAYBILL: Mr. Scanlin was up quite a while ago.

DELEGATE SCANLIN: Mr. Chairman. You're damned if you do and you're damned if you don't. Yesterday, I made the wrong move. I tried to restore some semblance of integrity to our committee system of operation. I got a telegram this morning, quote, your environmental speaking action and voting

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record Wednesday were poor. Please remember who you represent. Perhaps I chose the wrong proposal to restore some confidence in each other, but we've gone a long ways down the road now, ladies and gentlemen, to disrupt the system to which we are pledged. I support the article as it now stands.

CHAIRMAN GRAYBILL: Mr. Siderius, you're next.

DELEGATE SIDERIUS: Mr. President. First of all, I want to thank Mr. Gysler for having so much concern over my gravel pit. I think he has more concern over my gravel pit than I do myself. I would like to read to you what has happened to our timber industry. This was taken from the industry and commercial geography written by Russell Smith and Odgen Phillips. It is estimated that the original forests of the United States covered eight hundred and twenty-two million acres, and contained five thousand, two hundred billion board feet of lumber. In 1938, our commercial forests occupied about four hundred and sixty-two million acres, but only two hundred and thirteen million acres were covered with timber of saw log size of which half was virgin timber. For some years, we have been using timber at least twice as fast as it grows. No people past or present, have used or abused their forest resources, as the people of the United States. More than three-fourths of our present timber is located in the Pacific coast states. The first great shift from the center of lumber production occurred in the 1870's, when the

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output of Michigan, Wisconsin and Minnesota surpassed that of the northeastern states. In the closing years of the century, leadership of lumber production passed from the three great lake states to the south. Again in 1927, it shifted to the Pacific coast. Of the nation's total production of twenty-eight and nine-tenths billion board feet of lumber in 1941, about forty-one percent was cut in Oregon, Washington, and California. No other people in the world use so much paper as do the people of the United States, which amounts to over five hundred pounds per capita. The newspread paper supply in the United States presents a serious problem. We imported, in 1944, from Canada two million, five hundred thousand tons of newsprint paper, one million, one hundred thousand tons of woodpulp and one million, six hundred thousand cords of pulpwood. I think it would be terrible if we supported Mr. Delaney's amendment. I think we can support this section two wholeheartedly. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Brown.

VICE PRESIDENT BROWN: Mr. President. I think my position in this convention has been clear, that I am very much against putting legislation in this constitution. However, there are times when it becomes so important that I think we cannot ignore it, and I think this is one of the times. The people of eastern Montana are extremely concerned about their strip mining. I hope you'll take Mr. Blaylock's

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position and vote against this deletion, and if we can't live with the present article, at least amend it. We need a strong mandate on reclamation in this constitution. Thank you.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman and delegates. I come from the area in eastern Montana where there's going to be a big coal strip mining boom. I don't think it will be personally affected as far as the economic part of it is concerned. A lot of our grazing land and land that we lease, has been test core drilled and there's quite a lot of coal in there. When they'll move in, I don't know. However, our country is a beautiful country. I've been fortunate enough to live in one of the rare spots in Montana, as the few people who have been down in that area will certainly tell you. I and my neighbors, are very concerned about reclamation, devastation, but I feel the legislature, in its efforts last time, and in the future, the agreements that the private owners have had with the contracts that have been made, look okay to me and I think we're progressing in this area. Now, the cowboys down in that country have been telephoning to me and writing letters. They're very concerned but they say, don't tie these things up that we can't live with. Let the legislature take care of it. I rise in support of the move to delete.

CHAIRMAN GRAYBILL: Now, I'm going to let Mr. Delaney finish. We've debated this a long time, and I'm going

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to -- It's seems to me that it's going to be difficult not to be repetitous, but I don't want to cut anybody off. If you're not repetitous and if you can be brief, go ahead. I think Mr. Gysler, you were next.

DELEGATE GYSLER: Thank you Mr. Chairman. Would Mr. Foster yield to a question?

CHAIRMAN GRAYBILL: Mr. Foster. He isn't here? Mr. Foster, we want to ask a question of you.

DELEGATE GYSLER: I just wanted to ask Mr. Foster if he considered Charles Lindberg a company man.

DELEGATE FOSTER: No sir, Mr. Gysler.

DELEGATE GYSLER: Thank you, Mr. Foster. I just wanted to make that point, because as I said before, I want it amply understood on the floor. He was the one, after this article had been written and sent in, that said to us that this article is too strong. As far as I was concerned, we weren't only trying to write this article to cover coal mining and things that most of you think about. We were trying to write this article to cover the sump pits that is left in the oil fields when they drill a dry hole, or a good one. We were trying to make it all-encompassing, but I do realize that we need one that can be lived with. I am not one who believes that just because, with today's price of coal, we should sell the coal for anything we can get for it whether we can reclaim the land or not. I am one who happens to be-

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lieve that if the price of coal won't support the reclamation of that land today, then we wait for the day that it will, and then we well it. Thank you.

CHAIRMAN GRAYBILL: Mr. Harlow. I'm going to recognize you, Mr. Delaney, but these people were up also with you. Mr. Delaney, you may withdraw it, but we're going to have the debate. Mr. Harlow, it's your turn. Do you want to take it or not?

DELEGATE HARLOW: I have a few new things, Mr. Chairman, to add to this group here. I will not be repetitous. You have all commented the retainer fee people and the lobbyed people that leave this up to the legislature. Let me recall to you retainer fee people, and you research people to look under the laws of the 1921 legislature. They passed a law in 1921 prohibiting the building of a dam outside of Montana and backing water into Montana with due, just compensation for Montana, and without the continued compensation to Montana for the destroying of land by this water backed up from a dam built outside of Montana. The legislature, in 1921, thought that was a real good law, and it would protect the water and the land of Montana from then on. Look in the session laws of 1951. An outside company that had no holdings in Montana whatsoever, the Washington Water Power Company, wanted to build a dam in Idaho to back water into Montana in order to product hydroelectric power to be used in Idaho and Washington.

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The statute that was passed in 1921 said they couldn't do it without paying money to Montana for the use of Montana's land and Montana's water. The company didn't like that. The retainer fee people said that's bad, we can't afford to charge Washington Water Power for the use of Montana water and Montana land. So, what happened? In 1951, if you will look up in the journal and look up in the records, you will find that Senate Bill Number Nine was introduced repealing the law passed in 1921. That law passed through this check and balance legislature ahead of the Feed Bill. There you had a sample of your check and balance. I am thoroughly opposed to leaving this up to the legislature. If we want to protect our land, and protect it the way we want to protect it, let's not leave it up to the legislature or to the retainer and the lobbyed individual.

CHAIRMAN GRAYBILL: Very well, Mr. Delaney.

DELEGATE DELANEY: As when I made the motion, I still feel that this section three is not necessary, but I did not intend to take this body into the lengthly debate that it has been encompassed in. I would like to withdraw my substitute resolution, and ask that the Chair might recognize Mr. Dahood for an amendment that makes this section acceptable to me.

CHAIRMAN GRAYBILL: Are you going to withdraw it, or are you going to only withdraw it conditionally?

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DELEGATE DELANEY: I will withdraw it completely.

CHAIRMAN GRAYBILL: All right, now you've withdrawn it. Now, the problem with Mr. Dahood -- I certainly will recognize him. I have had nothing up here from him that I know of and I have three other amendments on this article ahead of yours. So, if you want to put yours in writing, Mr. Dahood, and send it up, I will be glad to take it into consideration.

DELEGATE DAHOOD: Very well, Mr. Chairman. I will do that. I --

CHAIRMAN GRAYBILL: Mr. Dahood does not have the floor. You don't have the floor, no. I'm explaining to Mr. Delaney. He has withdrawn his motion. There are a lot of people that have a lot of motions on this section. I am taking them in order, or putting them in some semblance of order. If you want an amendment, print it and send it up. I'll be glad to discuss it with you. If it conflicts with somebody else's, I'll discuss it with them, but I am not going to allow a conditional withdrawal. If you want to withdraw it, you can withdraw it. If you want to vote on it, you can vote on it. I'm not going to be bound at the Chair as to who's next because other people have rights too. Now, Mr. Delaney, do you want to withdraw?

DELEGATE DELANEY: No, I don't believe I do.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr.

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Delaney's motion. Is there further pertinent debate? If not, Mr. Delaney, you may close.

DELEGATE DELANEY: I don't believe there's any necessity of saying anything more. I think everybody has had a say here. I think we've heard it very adequately discussed. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Okay. Now, the issue is on Mr. Delaney's motion that we delete section two of the Natural Resources Report on environment, lines nineteen to twenty-four. I presume you want a roll call vote. So many as are in favor of deleting it, vote Aye. So many as are opposed, vote No. Has every delegate voted? Does any delegate wish to change his vote? Please take the vote.

Aasheim	- Nay	Berg	- Abs
Anderson, J.	- Aye	Berthelson	- Nay
Anderson, O.	- Nay	Blaylock	- Nay
Arbanas	- Nay	Blend	- Nay
Arness	- Abs	Bowman	- Nay
Aronow	- Nay	Brazier	- Aye
Artz	- Nay	Brown	- Nay
Ask	- Aye	Bugbee	- Nay
Babcock	- Aye	Burkhardt	- Nay
Barnard	- Nay	Cain	- Nay
Bates	- Aye	Campbell	- Abs
Belcher	- Aye	Cate	- Nay

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1	Champoux	-	Nay	Harrington	-	Nay
2	Choate	-	Nay	Heliker	-	Nay
3	Conover	-	Nay	Holland	-	Aye
4	Cross	-	Nay	Jacobsen	-	Aye
5	Dahood	-	Aye	James	-	Nay
6	Davis	-	Aye	Johnson	-	Aye
7	Delaney	-	Aye	Joyce	-	Aye
8	Driscoll	-	Aye	Kamhoot	-	Nay
9	Drum	-	Aye	Kelleher	-	Nay
10	Eck	-	Nay	Leuthold	-	Nay
11	Erdmann	-	Aye	Loendorf	-	Nay
12	Eskildsen	-	Aye	Lorello	-	Aye
13	Etchart	-	Aye	Mahoney	-	Nay
14	Felt	-	Abs	Mansfield	-	Nay
15	Foster	-	Abs	Martin	-	Aye
16	Furlong	-	Nay	McCarvel	-	Aye
17	Garlington	-	Aye	McDonough	-	Nay
18	Graybill	-	Abs	McKeon	-	Nay
19	Gysler	-	Nay	McNeil	-	Nay
20	Habedank	-	Nay	Melvin	-	Nay
21	Hanson, R. S.	-	Aye	Monroe	-	Nay
22	Hanson, R.	-	Abs	Murray	-	Aye
23	Harbaugh	-	Nay	Noble	-	Aye
24	Harlow	-	Nay	Nutting	-	Nay
25	Harper	-	Nay	Payne	-	Abs

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Pemberton	-	Aye	Sparks	-	Aye
Rebal	-	Nay	Speer	-	Nay
Reichert	-	Nay	Studer	-	Aye
Robinson	-	Nay	Sullivan	-	Aye
Roeder	-	Nay	Swanberg	-	Aye
Rollins	-	Nay	Toole	-	Aye
Romney	-	Nay	Van Buskirk	-	Nay
Rygg	-	Aye	Vermillion	-	Nay
Scanlin	-	Nay	Wagner	-	Nay
Schiltz	-	Nay	Ward	-	Nay
Siderius	-	Nay	Warden	-	Nay
Simon	-	Aye	Wilson	-	Nay
Skari	-	Nay	Woodmansey	-	Nay

CHAIRMAN GRAYBILL: Now, all the votes having been taken, I would like to explain that I do have an obligation to other people who take their turn. I just have to let them have their chance. If you want to make an amendment, everybody can have his chance, but you'll have to get it to me in writing unless it's so minor that we don't need it in writing.

CLERK SMITH: Mr. Chairman, thirty-three voting Aye, sixty voting No.

CHAIRMAN GRAYBILL: Sixty having voted No, thirty-three voting Aye, the motion to delete fails. Mr. Belcher, for what purpose do you rise?

DELEGATE BELCHER: Mr. Chairman, I was asked to

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pair my vote with Mr. Campbell, but as long as it's defeated, it's all right.

CHAIRMAN GRAYBILL: Very well. Mr. Ask, you had an amendment. Do you wish to make it next?

DELEGATE ASK: Mr. Chairman. I sent this up, but I would like to add one sentence in if I could.

CHAIRMAN GRAYBILL: Very well. Can you read it to us?

DELEGATE ASK: I would take the first sentence of section two -- all lands disturbed by the taking of natural resources must be reclaimed -- and then go on from the one I've submitted to the Chair.

CHAIRMAN GRAYBILL: Your amendment then is, all lands disturbed by the taking of natural resources must be reclaimed period, right?

DELEGATE ASK: Yes.

CHAIRMAN GRAYBILL: Then, the sentence, the legislature shall provide effective requirements and standards for reclamation of lands disturbed by the taking of natural resources, is that correct?

DELEGATE ASK: Yes.

CHAIRMAN GRAYBILL: Very well. I don't know if you have this. This is not out, is it?

DELEGATE ASK: No, it is not out.

CHAIRMAN GRAYBILL: All right. Now, so that every-

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body understands the nature of the amendment. We're discussi section two. The first sentence would be: All lands disturbed by the taking of natural resources must be reclaimed. Then put a period on line twenty after reclaimed. Then add this sentence: The legislature shall provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources. Therefore, Mr. Ask has an amendment which would make section two read: All lands disturbed by the taking of natural resources must be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources.

Mr. Ask.

DELEGATE ASK: Mr. Chairman. I feel that this wording of this section now that is being submitted to you, should cover everyone's requirements. It says to start with, all lands disturbed by the taking of natural resources must be reclaimed -- must be. Then, it goes on: The legislature shall provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources. I think this is what we're after. Like I said before, I'm not against reclamation, but if you read the other section, it said, to as good a condition or use, which is an impossibility. You'd just stop mining, you'd stop timbering, you'd stop a lot of agriculture activity. We're getting at

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what we want here. It must be reclaimed, but the legislature sets the effective standards. Every area of the state is different. You can't put one rule down for the entire state of Montana. I think this reaches it, and I think it's real strong and effective. I want to be brief so we can get on with the voting. Thank you.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I support the motion that is before the convention at this time. Frankly, Delegate Delaney and I had basically the same idea in mind. We think this would solve the problem; the broad language is necessary. It declares the policy of the people of the state of Montana. It provides a guideline to the legislature. It allows them, from year to year, to survey the situation and make whatever change in the law might be necessary to carry out the public policy of the people of this state for reclamation that is going to serve the general welfare. I support the motion that is before the floor.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I rise, also, to support this motion. I talked this morning with Ted Swinden, about this section, because I had talked with a number of environmentalists who had been confused by the wording. This is basically the language he suggested to me. I think it will do the job for us. Thank you.

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CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President. I also support this language. I think it's good. I think it's strong and I agree with Delegate Ask.

CHAIRMAN GRAYBILL: Mr. Delaney.

DELEGATE DELANEY: I support this motion as it is virtually the same wording as Mr. Dahood and I had agreed upon. This is virtually the same wording that I wanted to withdraw my other motion for. I support it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman. I rise to support this motion. I feel there must be something in the constitution, something that definitely states the reclamation of land. Thank you.

CHAIRMAN GRAYBILL: The Chair doesn't want to cut anybody off, but does anybody oppose this? I'd like to recognize somebody on the other side.

Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I support this.

CHAIRMAN GRAYBILL: One of my guidelines yesterday was that if you want to register your support, do it with your vote. Does anybody oppose it?

Mr. McDonough.

DELEGATE McDONOUGH: Mr. Chairman, I oppose this

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motion for the reason that it leaves to the legislature how to define the word reclaimed, and to what extent it should be reclaimed. At least, the original one put some guidelines in as to how it is to be restored and to what extent.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Would it be in order, Mr. Chairman, to ask what the other amendments to this were going to be? It seems to me that if we had a choice, it would be interesting.

CHAIRMAN GRAYBILL: The Chair can tell you that Mrs. Eck had one, which she pointed out is similar to this. Mr. Romney had one, of course, in which he was going to use the second half of the first sentence, but make it to as good a condition or use as is possible. I haven't seen Mr. Dahood's.

DELEGATE BURKHARDT: Would Mrs. Cross yield to a question?

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Yes, I will.

DELEGATE BURKHARDT: Louise, you have lived with this for weeks, and have had much difficulty in getting your concern expressed. How do you feel about this amendment?

DELEGATE CROSS: I'm going to be real honest here. When it was first proposed, I thought it would be fine. I have consulted someone whom I think is a remarkable man for analysis, and that is Mr. McDonough. He tells me that it

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doesn't say anything.

DELEGATE BURKHARDT: That's what I thought. Thank you.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: I rise in opposition to this amendment. As has been said, it doesn't do anything. What do we mean by reclaim? I use the same argument that you've just heard. The legislature may set up some real good standards right now, and some other bigger companies -- some outside company -- wants to come in and deplete some resources that we do not know about, that we have in Montana now. They can't live with the law that's on the books and so they bring the dear old lobby and pressure to bear and the legislature changes the law and we go back to nothing in the constitution. We must, in defining the method in which we want to maintain our environment here in Montana, put something in the constitution that cannot be changed overnight. I resist this amendment.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Mahoney.

DELEGATE MAHONEY: Mr. Chairman, would Mr. Ask yield to a question?

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Yes.

DELEGATE MAHONEY: You, I believe, stated that this

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would be flexible and pliable. Would this allow one thing for the Roundup country and another thing for down in the Decker country?

DELEGATE ASK: Yes. I think this gives flexibility. I don't think there's an acre of land in Montana that's the same. I think you're going to have to have different standards to put it into force. This section says it must reclaim it and sets the standards. I think this meets our needs here.

DELEGATE MAHONEY. Now, another question. Then, if you were just over the hill and a new mining company come in and one was already operating, and they says, we'll come in if you'll give us this special law for this area. Could this happen?

DELEGATE ASK: I suppose it could, but I can't feature the legislature going along with it.

DELEGATE MAHONEY: Oh, listen now. The legislature can do anything.

DELEGATE ASK: Mr. Mahoney. If the legislature sets up effective requirements and standards, I think it applies all over the state no matter who -- some old or some new company coming in. If they change the standards, they're going to have to change them for everyone through the entire state.

DELEGATE MAHONEY: This is not the way you answered

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when you said they could be different in Roundup and differe in Decker.

CHAIRMAN GRAYBILL: Mr. Mahoney, you asked your question. Do you want the floor?

DELEGATE MAHONEY: Whenever he gets through I --

CHAIRMAN GRAYBILL: Are you through with your answer, Mr. Ask?

DELEGATE ASK: Yes.

CHAIRMAN GRAYBILL: Very well.

Mr. Mahoney.

DELEGATE MAHONEY: This is what can happen under this thing where you turn it over to the legislature. They can come in and decide that a new industry -- Now, we saw what the legislature did when they gave the Anaconda Company the right of eminent domain. No other company had this right to go out and mine and take peoples' property on the right of eminent domain. This was put through the legislature. So, this can be done special for an individual thing, and I think when you put this in, you're legalizing special things in the constitution. This is my opinion of this amendment. I'm sorry, Mr. Chairman. I don't have a copy of it on my desk to study. It's a very critical thing. It's too bad that we're asked to operate upon this important a thing just being read by -- and I think you've done a nice job of reading it, but we certainly should have a little time to study it.

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CHAIRMAN GRAYBILL: Mr. Mahoney. Since it probably isn't going to be printed, I might read it again for you and it might help. Section two, Reclamation: All lands disturbed by the taking of natural resources must be reclaimed. Put a period after reclaimed. That much of the language is before you. Then the second sentence says: The legislature shall provide effective requirements and standards for the reclamation of land that is disturbed by the taking of natural resources.

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. In order to bring this to a head, I offer the following amendment to the Ask amendment. After the word, reclaimed, add, to as good a condition or use as is possible period. Then continue and retain the rest of the subsection.

CHAIRMAN GRAYBILL: Very well. I understand it to be the sense of your motion that you add after the word, reclaimed, the sense of your prior proposed amendment which is to as good a condition or use as is possible, retaining the rest of Mr. Ask's language.

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I think that would be a qualifying statement expressing how it is to be reclaimed, meeting at least to a meager extent, the objections of Delegate McDonough, in which I concur, and I think that the rest

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of this matter has been thoroughly debated and I don't need to go over it again.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. It just impressed me as I got to listening to all these things, that all of a sudden I find that no where in here does it say who is going to do the reclaiming. As far as I can read that thing, and everything that has been in there so far, it would require the state to do the reclaiming. I wonder if Mr. Romney would just add something like by the disturber in there. Really, I mean it. For Mr. Harlow, I'll do this for the twenty dollar fee I'm getting paid for this fifteen hour day I'm putting in.

DELEGATE ROMNEY: Mr. Chairman, may I reply?

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: I would have no objection. Of course, that is already handled by statute.

CHAIRMAN GRAYBILL: Mr. Romney, is it your purpose to add Mr. Schiltz's words to your amendment or not? He wants it to say, to as good a condition as possible by the disturber.

DELEGATE ROMNEY: I think not so, sir, because that would require considerable action by the --

CHAIRMAN GRAYBILL: You don't have to explain why. I just want to know if it's in or out. All right. The issue is on Mr. Romney's motion to add, to as good a condition or use as possible.

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Mr. Davis.

DELEGATE DAVIS: I must oppose this amendment. That is much stronger language than it says to as good a condition or use as prior to the disturbance. It's possible to improve the land particularly where a lot of the mining is in our area, where it's rocky. I don't know where you'd get the rocks to put back on it, etc. Where mother nature has slide areas, etc., I wanted to support the other one and appeal to my fellow delegates to go ahead and vote on this. Everyone got a good day in yesterday of talking. I think we should follow our president's guideline today. If everyone felt that they picked out the lawyers and made a few statements against them. Let's go ahead and vote on this. We're not going to change a lot of minds, and go and try to finish our work here. On this particular amendment, it's not -- it's making it more difficult to pass as possible. You can make grazing land, irrigated land, that's possible even if you have to import the water. Or you can put flowers on land. That's possible. When you say as good a condition as possible, you're going the other way from trying to reach a compromise, which I think we're all trying to do here. I'm hopeful we can reach a sensible compromise because, actually, we all want the land reclaimed. But, when you get right down to it, it's still going to be the legislature that's meeting twenty years from now, instead of what we write in here today, that's

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going to have to implement this in a practical manner in this state. I submit that the amendment of Mr. Romney's is creating more of an impasse. If we defeat that, we can pass the other one and get on with the rest.

CHAIRMAN GRAYBILL: Very well.

Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, would Mr. McDonough yield to a question?

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: I yield.

DELEGATE BLAYLOCK: Mr. McDonough, would you give us your feeling of what this addition by Mr. Romney -- is it too far, is it adequate?

DELEGATE McDONOUGH: I think it's too far and too strenuous.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman and fellow delegates. I want to make one point with you and then I'm going to quit trying to put my finger in the dyke.

CHAIRMAN GRAYBILL: Okay, let's hear it.

DELEGATE BRAZIER: I promise for you, Mr. Chairman, not to speak unless spoken to again. I would like to get this point across once and for all.

CHAIRMAN GRAYBILL: I just want you all to speak quickly. I want to do this before noon.

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DELEGATE BRAZIER: The only dealing that I've had with the Anaconda Company was a case about eight years ago in the supreme court, where I represented a widow. The Anaconda Company showed up at the last minute, spoke to the court and said, if you rule in favor of Mr. Brazier's widow, we're going to lose a hundred thousand dollars. I think you all know who won and who lost that case.

CHAIRMAN GRAYBILL: Mr. Brazier, how is that pertinent to Mr. Romney's amendment?

DELEGATE BRAZIER: If you'll indulge me for about two more sentences, I can get right on it.

CHAIRMAN GRAYBILL: Okay. Get with it.

DELEGATE BRAZIER: Okay. Now, the point is that bad law was made. We took it to the legislature and corrected it. The point I'm trying to make here is we've got a proposal that we're going to restore this land to as good a use as possible. Somewhere in the future, there's going to be a lawsuit brought by the state, or by an individual, against one of these coal mining companies for not restoring to as good a use as possible. That company is going to put in evidence that that rotten terrain left out there is as good as they could possibly put it. The district court is going to rule against the company and it's going to come up here to the supreme court. The supreme court is going to rule that, as a matter of law, that sloppy reclamation is as good as possible.

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You will not be able to go to the legislature to overrule the supreme court because it's in the constitution. You will not be able to go to the federal courts because it's a state matter. You will not be able to vote out your supreme court judge because you gave him eight years. If you do remember after eight years that he's the guy that did it, he's going to be replaced by a candidate who is proposed by a committee made up of the same people who put that judge in to begin with. What I've been trying to tell you is this is legislative. Let's let the legislature fight the battles. Don't let the big companies lock you into a bad position. Mr. Chairman, I resist Mr. Romney's amendment.

CHAIRMAN GRAYBILL: Mr. Rebal, do you want to speak?

DELEGATE REBAL: I certainly do. Mr. President and fellow delegates. According to Webster's new world dictionary, the definition of reclaim is to make unproductive land useful. I believe your committee's thoughts are to make certain that provisions would be made to restore the land to a beneficial use. That beneficial use to be determined prior to the disturbance of the land. This effort has the best of intentions, but the far-reaching effects that may occur will not affect just the company. It may be an infringement on individual rights also. I still think an amendment could possibly be made to do what may be required to accomplish our mutual objective. I do not have the words, but I hope to hear

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them yet. Thank you.

CHAIRMAN GRAYBILL: Mr. Romney, you may close.

DELEGATE ROMNEY: Mr. Chairman and delegates. I think that the definition just read by Delegate Rebal is a demonstration of the adequacy of the phraseology that is in this amendment. I also point out that in refuting Delegate Brazier's statement, that the final sentence of the subsection, the condition or use to which the land is to be reclaimed and the method of enforcement of the reclamation must be established by the legislature. I think that establishes that his fears are groundless, and I think it shows a qualification of the word, possible. I think that everything is hunky-dory.

CHAIRMAN GRAYBILL: Do you want a roll call vote? Very well. All in favor of Mr. Romney's motion which is to add the phrase, reclaim to as good a condition or use as is possible. All in favor of that, vote Aye. All opposed, vote No. For what purpose do you rise, Mr. Habedank?

DELEGATE HABEDANK: Mr. Chairman. As I understood Mr. Romney's motion, it was to the Ask amendment. It -- Mr. Romney just spoke to an entirely different matter. I agree with his latter comments, but we cannot vote intelligently to the one if he meant to --

CHAIRMAN GRAYBILL: I understand your point. Mr. Romney read the last half of the sentence here. Mr. Ask has substituted a different form of legislative referral to that

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in the book. However, Mr. Romney made his amendment to the sentence Mr. Ask fashioned by putting a period after reclaimed. The first sentence under Mr. Romney would read: All land disturbed by the taking of natural resources must be reclaimed to as good a condition or use as is possible. Now, that's all you really need to know. We're not through with the sentence. It still is going to have this legislative thing. The legislature shall provide effective requirements, etc., goes on it. He's amending Mr. Ask's amendment. All in favor of Mr. Romney's motion, vote Aye, and opposed, vote No. Have all the delegates voted? Any delegate wish to change his vote? Please take the vote.

Aasheim	-	Nay	Berthelson	-	Nay
Anderson, J.	-	Nay	Blaylock	-	Nay
Anderson, O.	-	Nay	Blend	-	Nay
Arbanas	-	Nay	Bowman	-	Nay
Arness	-	Abs	Brazier	-	Nay
Aronow	-	Nay	Brown	-	Nay
Artz	-	Nay	Bugbee	-	Nay
Ask	-	Nay	Burkhardt	-	Aye
Babcock	-	Nay	Cain	-	Nay
Barnard	-	Aye	Campbell	-	Abs
Bates	-	Aye	Cate	-	Aye
Belcher	-	Nay	Champoux	-	Aye
Berg	-	Abs	Choate	-	Nay

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1	Conover	-	Nay	Holland	-	Aye
2	Cross	-	Nay	Jacobsen	-	Nay
3	Dahood	-	Nay	James	-	Nay
4	Davis	-	Nay	Johnson	-	Nay
5	Delaney	-	Nay	Joyce	-	Nay
6	Driscoll	-	Nay	Kamhoot	-	Nay
7	Drum	-	Nay	Kelleher	-	Aye
8	Eck	-	Aye	Leuthold	-	Nay
9	Erdmann	-	Nay	Loendorf	-	Aye
10	Eskildsen	-	Nay	Lorello	-	Nay
11	Etchart	-	Nay	Mahoney	-	Aye
12	Felt	-	Abs	Mansfield	-	Nay
13	Foster	-	Abs	Martin	-	Abs
14	Furlong	-	Aye	McCarvel	-	Nay
15	Garlington	-	Nay	McDonough	-	Nay
16	Graybill	-	Abs	McKeon	-	Aye
17	Gysler	-	Nay	McNeil	-	Nay
18	Habedank	-	Nay	Melvin	-	Nay
19	Hanson, R. S.	-	Nay	Monroe	-	Aye
20	Hanson, R.	-	Nay	Murray	-	Nay
21	Harbaugh	-	Aye	Noble	-	Nay
22	Harlow	-	Aye	Nutting	-	Nay
23	Harper	-	Aye	Payne	-	Abs
24	Harrington	-	Nay	Pemberton	-	Aye
25	Heliker	-	Aye	Rebal	-	Nay

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Reichert	-	Aye	Speer	-	Aye
Robinson	-	Aye	Studer	-	Nay
Roeder	-	Aye	Sullivan	-	Nay
Rollins	-	Aye	Swanberg	-	Nay
Romney	-	Aye	Toole	-	Nay
Rygg	-	Aye	Van Buskirk	-	Nay
Scanlin	-	Nay	Vermillion	-	Aye
Schiltz	-	Aye	Wagner	-	Nay
Siderius	-	Aye	Ward	-	Nay
Simon	-	Nay	Warden	-	Aye
Skari	-	Nay	Wilson	-	Nay
Sparks	-	Nay	Woodmansey	-	Nay

CLERK SMITH: Mr. President, twenty-nine voting Aye, sixty-four voting No.

CHAIRMAN GRAYBILL: Sixty-four having voted No, and twenty-nine having voted Aye, Mr. Romney's motion is defeated. We're back on Mr. Ask's amendment. Mr. Ask's amendment says: All lands disturbed by the taking of natural resources must be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources. Is there further debate? Mr. Schiltz, do you want to amend it?

DELEGATE SCHILTZ: No.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. Chairman. I sat back and

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listened with a great deal of interest to the debate about the reclamation of land in eastern Montana. I happen to live in this area and own quite a bit of land that will be affected by the strip mining of coal. I have no objection to Mr. Ask's motion. I do agree with Mr. Schiltz. It has bothered me quite a long time that the state of Montana is in the reclamation business. I feel that some definition should be added here that would provide that the industry that is mining the coal should pay for the reclamation of the land and I submit this for the delegates' consideration.

CHAIRMAN GRAYBILL: Is there further discussion of Mr. Ask's amendment to section two? Very well. The question is on Mr. Ask's amendment which would put a period after the word, reclaimed, in line twenty on page three so that section two would read: All lands disturbed by the taking of natural resources must be reclaimed. It would then add the following sentence in place of the rest of the section. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources. We'll have a roll call vote. So many as shall be in favor, vote Aye. So many as shall be opposed, vote No. Have all the delegates voted? Does any delegate wish to change his vote? Take the vote please.

Aasheim	- Aye	Anderson, O.	- Aye
Anderson, J.	- Aye	Arbanas	- Aye

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1	Arness	-	Abs	Davis	-	Aye
2	Aronow	-	Aye	Delaney	-	Aye
3	Artz	-	Nay	Driscoll	-	Aye
4	Ask	-	Aye	Drum	-	Aye
5	Babcock	-	Aye	Eck	-	Aye
6	Barnard	-	Aye	Erdmann	-	Aye
7	Bates	-	Aye	Eskildsen	-	Aye
8	Belcher	-	Aye	Etchart	-	Aye
9	Berg	-	Abs	Felt	-	Abs
10	Berthelson	-	Nay	Foster	-	Nay
11	Blaylock	-	Aye	Furlong	-	Aye
12	Blend	-	Aye	Garlington	-	Aye
13	Bowman	-	Aye	Graybill	-	Abs
14	Brazier	-	Aye	Gysler	-	Nay
15	Brown	-	Aye	Habedank	-	Nay
16	Bugbee	-	Aye	Hanson, R. S.	-	Aye
17	Burkhardt	-	Aye	Hanson, R.	-	Aye
18	Cain	-	Aye	Harbaugh	-	Nay
19	Campbell	-	Abs	Harlow	-	Nay
20	Cate	-	Nay	Harper	-	Nay
21	Champoux	-	Nay	Harrington	-	Aye
22	Choate	-	Aye	Heliker	-	Aye
23	Conover	-	Aye	Holland	-	Aye
24	Cross	-	Nay	Jacobsen	-	Aye
25	Dahood	-	Aye	James	-	Aye

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Johnson	- Aye	Robinson	- Nay
Joyce	- Aye	Roeder	- Nay
Kamhoot	- Aye	Rollins	- Nay
Kelleher	- Aye	Romney	- Nay
Leuthold	- Nay	Rygg	- Aye
Loendorf	- Aye	Scanlin	- Nay
Lorello	- Aye	Schiltz	- Nay
Mahoney	- Nay	Siderius	- Nay
Mansfield	- Aye	Simon	- Aye
Martin	- Abs	Skari	- Aye
McCarvel	- Aye	Sparks	- Aye
McDonough	- Nay	Speer	- Nay
McKeon	- Abs	Studer	- Aye
McNeil	- Nay	Sullivan	- Aye
Melvin	- Abs	Swanberg	- Aye
Monroe	- Nay	Toole	- Aye
Murray	- Aye	Van Buskirk	- Nay
Noble	- Aye	Vermillion	- Nay
Nutting	- Aye	Wagner	- Nay
Payne	- Abs	Ward	- Nay
Pemberton	- Aye	Warden	- Aye
Rebal	- Aye	Wilson	- Aye
Reichert	- Nay	Woodmansey	- Aye

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Could I explain my vote? I

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voted for this but I really oppose it because I think it says nothing.

CHAIRMAN GRAYBILL: Very well. Will you please announce the vote?

CLERK SMITH: Mr. Chairman, sixty-three voting Aye, twenty-nine voting No.

CHAIRMAN GRAYBILL: Sixty-three having voted Aye, twenty-nine having voted No, the amendment of Mr. Ask is adopted. The section now reads: All lands disturbed by the taking of natural resources must be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources. Is there further discussion?

Mr. Cate.

DELEGATE CATE: I move to amend section two as amended by adding after the word, reclaimed, to a beneficial and productive use. The remainder of the paragraph would read as amended by Mr. Ask.

CHAIRMAN GRAYBILL: Mr. Cate has proposed an amendment to add after the word, reclaimed, to a beneficial and productive use. We'll have a roll call vote on it. All in favor of Mr. Cate's proposal to add after the word, reclaimed, that phrase so that the first sentence would read: All lands disturbed by the taking of natural resources must be reclaimed to a beneficial and productive use. All in favor, vote Aye

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on the voting machines. All opposed, vote No. Have all the delegates voted? Any delegate wish to change his vote? Please take the vote.

Aasheim	- Nay	Campbell	- Abs
Anderson, J.	- Nay	Cate	- Aye
Anderson, O.	- Nay	Champoux	- Aye
Arbanas	- Aye	Choate	- Aye
Arness	- Abs	Conover	- Aye
Aronow	- Nay	Cross	- Aye
Artz	- Aye	Dahood	- Abs
Ask	- Nay	Davis	- Nay
Babcock	- Nay	Delaney	- Nay
Barnard	- Aye	Driscoll	- Nay
Bates	- Abs	Drum	- Aye
Belcher	- Abs	Eck	- Aye
Berg	- Abs	Erdmann	- Nay
Berthelson	- Nay	Eskildsen	- Nay
Blaylock	- Aye	Etchart	- Aye
Blend	- Aye	Felt	- Abs
Bowman	- Aye	Foster	- Aye
Brazier	- Aye	Furlong	- Aye
Brown	- Aye	Garlington	- Nay
Bugbee	- Aye	Graybill	- Abs
Burkhardt	- Aye	Gysler	- Nay
Cain	- Aye	Habedank	- Aye

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1	Hanson, R. S.	-	Nay	Monroe	-	Aye
2	Hanson, R.	-	Aye	Murray	-	Nay
3	Harbaugh	-	Aye	Noble	-	Nay
4	Harlow	-	Aye	Nutting	-	Aye
5	Harper	-	Aye	Payne	-	Abs
6	Harrington	-	Aye	Pemberton	-	Nay
7	Heliker	-	Aye	Rebal	-	Aye
8	Holland	-	Aye	Reichert	-	Aye
9	Jacobsen	-	Aye	Robinson	-	Aye
10	James	-	Aye	Roeder	-	Aye
11	Johnson	-	Nay	Rollins	-	Aye
12	Joyce	-	Nay	Romney	-	Aye
13	Kamhoot	-	Aye	Rygg	-	Nay
14	Kelleher	-	Aye	Scanlin	-	Aye
15	Leuthold	-	Aye	Schiltz	-	Aye
16	Loendorf	-	Aye	Siderius	-	Aye
17	Lorello	-	Nay	Simon	-	Nay
18	Mahoney	-	Aye	Skari	-	Aye
19	Mansfield	-	Aye	Sparks	-	Nay
20	Martin	-	Aye	Speer	-	Aye
21	McCarvel	-	Aye	Studer	-	Abs
22	McDonough	-	Aye	Sullivan	-	Nay
23	McKeon	-	Aye	Swanberg	-	Nay
24	McNeil	-	Aye	Toole	-	Aye
25	Melvin	-	Abs	Van Buskirk	-	Aye

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Vermillion	- Aye	Warden	- Aye
Wagner	- Aye	Wilson	- Nay
Ward	- Aye	Woodmansey	- Aye

CLERK SMITH: Mr. Chairman, sixty-three voting Aye, twenty-seven voting No.

CHAIRMAN GRAYBILL: Sixty-three having voted Aye, twenty-seven voting No, Mr. Cate's amendment passes. The sentence now reads: All lands disturbed by the taking of natural resources must be reclaimed to a beneficial and productive use. The second sentence reads: The legislature shall provide effective requirements and standards for the reclamation of land disturbed by the taking of natural resources. Is there further discussion? Very well. Mr. Ask, will you move that when this committee does arise and report after having had under consideration section two, as amended, that the same be recommended for adoption? Will you so move?

DELEGATE ASK: Mr. Chairman, I so move.

CHAIRMAN GRAYBILL: Very well. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: Section two is adopted as amended. Will the clerk read section three, sub one?

CLERK SMITH: (Reading) Section three, Water Rights,

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sub one: All existing rights to the use of any waters in this state for any useful or beneficial purpose are hereby recognized and confirmed. Subsection one, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that when this committee does rise and report after having had under consideration section three, subsection one, it recommend the same be adopted.

CHAIRMAN GRAYBILL: Very well. Mr. McNeil.

DELELGATE McNEIL: Mr. Chairman. In presenting the committee's comments, I would like to beg your indulgence and present the comments for all six subsections at the same time. They are all related to each other. Your committee feels that water and water rights are of crucial importance to the past history and future development of the state of Montana. For this reason, the committee feels justified in expanding the present constitutional section, which relates solely to the use of water to include provisions for the protection of the waters of the state for use by its people. Subsection one as read by the clerk guarantees all existing rights to the use of water, and includes all adjudicated rights and nonadjudicated rights, including water rights for which notice of appropriation has been filed, as well as rights by use for which no filing is of record. Subsection two is a verbatim duplication of Article Three, subsection fifteen, of our present constitu-

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tion, and has been retained in its entirety to preserve the substantial number of court decisions interpreting and incorporating the language of this section. Subsection three is a new provision to establish ownership of all waters in the state subject to use by the people. This does not, in any way, affect the past, present or future right to appropriate water for beneficial uses, and is intended to recognize Montana Supreme Court decisions and guarantee the state of Montana's standing to claim all of its waters for use by the people of Montana in matters involving other states and the United States government. Subsection four is a new provision to permit recreation and stock watering to acquire a water right without the necessity of a diversion. This applies only to future rights and, of course, only to waters for which there are no present water rights. This subsection further provides that future agricultural and industrial water development will not be foreclosed by recreation, as it is left up to the legislature to determine the method of establishing a future water right without a diversion, and the legislature is further authorized to establish priorities of water uses, where the legislature determines priorities necessary. Subsection five acknowledges a continuance of our present water law principle that the first appropriation in time is the better right, and provides that no future appropriation shall be denied except in the public interest. Subsection six mandates the legis-

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lature to administer control and regulate water rights. This does not in any way change the present legislatively established system of local control of adjudicated waters by water commissioners appointed by the district court having jurisdiction. A new requirement is added to establish a system of centralized records of all water rights, in addition to the present statutory system of local filing of records. The centralized records are intended to provide a single location for water rights information and a complete record of all water rights. I ask that as we take these subsection by subsection, we please keep all of them in consideration and please don't be careless in style and drafting type amendments. This is a very technical area. Thank you.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: I think that this matter of water rights for the state of Montana is undoubtedly the singlemost important item that is going to come before our convention. I think perhaps I think this because I grew up in the Dark Ages up on the Hi-Line, where we had to haul water from reservoirs and store it in cisterns. Our 1889 constitution failed to declare Montana water the property of the state of Montana and its citizens. All other western states have done this. We are presently laboring under a great disadvantage in negotiating and coming into water pacts with all of our neighboring states, and protecting ourselves against their needs in

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the future, and against the federal government agencies. Water is not like land. Water runs on and on. The bulk of the water that flows into the Missouri, Mississippi and the Columbia river basins all originates up in the Montana Rockies. Yet, as a state, we are absolutely powerless in protecting our future needs for both irrigation and expansion against ambitious federal agencies and thirsty neighbors. They will have all of their water needs documented very well by the time that the present moratorium ends. We have only six years in which to do this. I don't anticipate another Constitutional Convention in six years. We have to do this right now. If we don't clean up this water mess that we have now, our water can be diverted into downstream water sheds. The federal agencies, of course, always say they don't come in and divide the water until the states have failed to do this. As I say, we have only six years left to do this. My concern, therefore, concentrates itself right on subsection three, where we declare the water to be the property of the state for the use of the people of Montana, and subsection six. This may not seem to be very important to you to set up a central filing agency, but it's tremendously important. Our water rights mean absolutely nothing. They say seventy-five percent of our water rights that are now filed are absolutely meaningless for this one reason. All we've ever had to do --We've just existed by the old mining law, first in time, first in writing and in

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order to file for a water right, all you have to do is go down to the courthouse. Now, when I was married in Great Falls, I found to my utter dismay, that no one had ever appropriated for a drop of the water for the state. At that time, we were processing our city water, selling it to two communities, Malmstrom Air Force Base and also to the Anaconda Company who, in turn, sold that same water to the town of Black Eagle. We sold it to the refinery and we sold it to the brewery. Not a drop of this had ever been appropriated. So, when I went down, -- I had the attorney draw up the appropriation papers, and he said, you know, Marian, this really doesn't mean anything. We'll file them, and we did, but I don't know how many cities in Montana have even done that. We went down there and found that most of these streams that come into the Missouri, and particularly the Missouri around Great Falls, had already been filed on for all the water that flowed or ever would flow. I do know that you would recognize the rights of a city, but at the time, the city bought their water from the old private water works. The city's uses were very, very small and it certainly would not accommodate the use that the city of Great Falls is now using. Besides this, we don't want to cripple our state in the future without being sure that we can reserve enough water right here in the state, to take care of all of our future industrial and irrigation needs. I want you to watch paragraphs three and six. I thank you, Mr. President.

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CHAIRMAN GRAYBILL: Now, the Chair has had read subsection one of section three. I have before me some amendments to subsections four and five. I have no amendments proposed to subsections one, two or three. If anyone cares to speak about or in opposition to subsection one, section three, I wish they would do so. Otherwise, I will expect you to stay on subsection one and we'll get that disposed of.

Mr. Davis.

DELEGATE DAVIS: I first should disclose that I have an interest in the subject. I'm attorney for a water company where we build a dam and irrigate many thousands of acres of land. I also have clients who float on the water, fish in the water, and drink the water occasionally. So, I have a great interest in it. The whole purpose, for the purpose of the journal, is to establish in this first sentence, that all existing water rights are recognized and confirmed. So no one will get any idea that we're trying to take away any vested or existing rights. I make that statement merely for the journal. If there is any dissent or difference of opinion on it, I think it should be expressed.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman. I come from a county where there's a great deal of irrigation. However, we are dry land wheat ranchers. I know this is of great interest to our area, and so I took this to Judge Lesley and to several

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others within the valley, and they all feel it is a workable plan. Later, when we get a little further into our articles, I may have a slight amendment. However, I feel it protects the appropriated and the adjudicated rights -- water rights -- that our district is so interested in. Thank you.

CHAIRMAN GRAYBILL: Very well. The question arises on the motion of Mr. Murray that when this committee does arise and report after having under consideration subsection one of section three, that it recommend the same do pass. All in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Please read subsection two, Mr. Clerk.

CLERK SMITH: (Reading) Subsection two: The use of all water now appropriated, or that may hereafter be appropriated for sale, rental, distribution, or other beneficial use, and the right of way over the lands of others, for all ditches, drains, flumes, canals, and aqueducts, necessarily used in connection therewith, as well as the sites for reservoirs necessary for collecting and storing the same, shall be held to be a public use. Subsection two, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move that when

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this committee does rise and report after having had under consideration section three, subsection two, of Proposal Number Six, it recommend the same be adopted.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. I would like to briefly remind the convention that this is verbatim, word for word, from our present constitution. The committee takes no pride in the style and drafting of this, but we felt it very important to preserve eighty years or more of water law litigation, that it be preserved in its exact language.

CHAIRMAN GRAYBILL: Very well. Members of the Committee, you have before you on the motion of Mr. Murray, that when this committee does arise and report after having had under consideration subsection two of section three, that it recommend the same be adopted. So many as shall be in favor of that, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: The Ayes have it and it's adopted. Please read subsection three.

CLERK SMITH: (Reading) Subsection three: All surface, underground, flood, and atmospheric waters within the boundaries of the state of Montana are declared to be the property of the state for the use of its people and subject

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to appropriation for beneficial uses as provided by law. Subsection three of section three, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move that when this committee does arise and report after having had under consideration section three, subsection three, of Proposal Number Six, it recommend the same be adopted.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, may I ask Mr. McNeil a question?

CHAIRMAN GRAYBILL: Mr. McNeil, will you yield?

DELEGATE McNEIL: I yield.

DELEGATE ARONOW: Mr. McNeil, is there any intent by your committee, or of the drafters of this subsection three, to provide for access over private lands to the general public in order to get to streams or reservoirs or waters?

DELEGATE McNEIL: Absolutely not. Mr. Aronow, if I may explain that a bit further -- A delegate proposal, which was introduced by Delegate Berthelson, did specifically contain such a provision which provided recreational access to the high water mark. We deleted that.

DELEGATE ARONOW: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: I move to amend on page nine, line seventeen and into line eighteen, the words, for the use of

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its people and.

CHAIRMAN GRAYBILL: Are you deleting that?

DELEGATE ARONOW: Yes, those words, so that the subsection will read: Waters within the boundaries of the state of Montana are declared to be the property of the state subject to appropriation for beneficial uses as provided by law. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: I received a great many letters and some long distance phone calls on this matter from ranchers along the mountain front in my district, who were extremely fearful of this provision. One rancher told me that they have some friends in Oklahoma. The state of Oklahoma has a provision similar to this. I have not looked it up, but these ranchers told my friends that because of this, the public runs over their ranches to get to a river or stream, leave gates open, kill thoroughbred cattle, drive the cattle away from the water when they come to drink, and when the ranchers remonstrate with the public, the reply to them is that the water belongs to the people and therefore, they can't be kept away from it. I feel that ranching is one of the great industries of the state of Montana. It's part of the agricultural picture and I know that these ranchers are having a difficult enough time with economics, without having their hay meadows ruined, without having their cattle run

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around so they lose weight, having some of their livestock killed by trespassers, and also having their livestock get out by people who will not close gates. These ranchers down in Oklahoma had to build three cattle passes at their own expense because of the gate problem. I think by eliminating these words, we will cause no problem. I understand also that the state of Colorado merely states that unappropriated waters belong to the state, and they leave out the words, to the people of the state. I ask your support of this amendment, as a large segment of the people, the cattle ranchers of Montana, desire it.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: I concur in Delegate Aronow's proposal. The state of Wyoming has what is considered to be the model water clause in their constitution. They simply say, water is state property. The water of all natural springs, streams, lakes or other collections of water within the boundaries of the state are hereby declared the property of the state period.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. I would accede to that amendment. The source of that language we considered carefully. We carefully considered Colorado's, which has been upheld by the U. S. Supreme Court and it says the water belongs to the people. We had four delegate proposals introduced

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Two of them said it belonged to the state and two of them said it belonged to the people. So, I said it belonged to the state for the use of the people. I think it doesn't, in any way, change the intent or the meaning of the section which is to establish the ownership of the water so that the state will have standing to claim the water in litigation with other states, or with the U. S. government. So, I think if this would clarify the apprehension of some of the water users, this is a good amendment.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, will Mr. Aronow yield to a question?

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: I yield, Mr. Chairman.

DELEGATE BLAYLOCK: Cedor, all the reasons that you give for taking this out, I am in sympathy with. On the other hand, I also have a worry about the people in our towns here in Montana -- Billings, Great Falls and all the other towns -- who may want to get to our water for recreation, but are precluded from doing so because wealthy Californians and wealthy easterners have come in here and bought up huge chunks of our Montana land along our rivers, and then say to our citizens, you can't use it. Do you have any solution to that problem?

DELEGATE ARONOW: Mr. Blaylock. The people who called

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me are second and third generation ranchers and Montanans. There weren't any Californians or Johnny-come-latelies. I think that there is some provision -- no, there isn't. The Fish and Game Department does have a program, as I understand, to buy up land for access to rivers and fishing grounds. I am also sympathetic, but I have found no rancher that I have gone to and talked to, where I wanted to go on his land to fish, that I didn't ask him if I couldn't go to fish or hunt or whatever, that he didn't give me access. If he had some old pasture, he told me where it was and I always assured him that I wouldn't dump any beer cans or pop cans, or strew any lunch around on his land, or do any damage, or drive my car or vehicle over his hay meadows. I think if we all deported ourselves in that fashion, there wouldn't be any problem.

CHAIRMAN GRAYBILL: Mr. Aronow. I wonder if you would yield to one question from the Chair.

DELEGATE ARONOW: Yes.

CHAIRMAN GRAYBILL: Do I understand it to be the sense of your remarks, which are of course in the record here, that a rancher could fence a fishing stream, a river, so that I couldn't fish or boat or go up and down that river?

DELEGATE ARONOW: No, that is not the sense of my remarks. You can go up and down that stream all you want to. The only thing is you can't drive across the rancher's land willy-nilly in order to get to it. You can go along the county

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roads or wherever there's access. You certainly may boat. You may hike up and down that stream.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman. I think this is probably a good time to tell the delegates why I had printed and spread on their desks this sheet of paper which went out just as we started discussing the water bill. That --

CHAIRMAN GRAYBILL: Mr. Gysler, could you supply the Chair with one?

DELEGATE GYSLER: Certainly. The dark line on there starting up in North Dakota, as you will recognize, is the Missouri River, which comes from this state. As it comes down, you will find that on the border of South Dakota and Nebraska, there are some impoundments that go to the west that are our dams. This is one thing that your committee is very concerned about, and has taken a lot of time on this article to try to figure out how we can assure that when this moratorium goes off in 1978, that we can keep as much water for the people of Montana for posterity, as we possibly can. I'll be brief but, very basically, inside of this book -- There are approximately fifty-three million acres of land in the high plains area between the hundredth and hundred and fifth meridians reasonably adaptable to irrigation -- twelve million in Nebraska, twelve million in Kansas, about three hundred thousand in Oklahoma, almost sixteen million in

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Colorado, one hundred thirty-three thousand in New Mexico and twelve and a half million in Texas. This is the reason why we tried to write as strong a position in number three here as we possibly could. As Mr. McNeil said, the constitution of the state of Colorado says that the water belongs to the people. The state of Wyoming's says that the water belongs to the state, and this is why we incorporated both of them in there. The Eagle County case in Colorado was one where the forest service said that all water that comes off the U. S. Forest Service lands here is ours. This is what the Eagle County case was all about. If Colorado had not said that this water belongs to the people, as they did in their constitution, they would have lost that case just as the Rock Creek Canal Company in Valley County folded up before the bureau of land management on the case that they had when they delved so deeply into it. Before we broke for lunch, I wanted you to take a look at this sheet so you have some idea of at least one of the plans that will be proposed for the use of Montana water when this moratorium ends in 1978.

CHAIRMAN GRAYBILL: Mr. Davis, it's now 12:00 o'clock and Mr. Driscoll has asked for the floor for a moment. Then, I think we should recess for lunch.

Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman. I would reserve my point of personal privilege until Mr. Foster is present.

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He is not present at the present time.

CHAIRMAN GRAYBILL: Very well.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. I move that we stand in recess until 1:00 o'clock P.M. this day.

CHAIRMAN GRAYBILL: All in favor of the motion to recess until 1:00 o'clock P.M., please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered.

Mr. Rygg.

DELEGATE RYGG: I'd like to have a Revenue and Finance Committee meeting immediately in Room 437.

CHAIRMAN GRAYBILL: Revenue and Finance immediately in 437. Thank you.

(Recess 12:02 o'clock P.M.)

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MONTANA CONSTITUTIONAL CONVENTION

THIRTY-SIXTH DAY

1:13 o'clock, P.M. Convention Hall

March 2, 1972 Helena, Montana

CHAIRMAN GRAYBILL: The Convention will be in session. The Committee will be in session. At the beginning of the recess we were discussing section three, subsection three, and Mr. Aronow has an amendment before us to strike from lines eight and nine on page four the words, for the use of its people and, so as to make it read that the water would be -- the state of Montana -- declared to be the property of the state subject to appropriation for beneficial uses.

Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I believe I might be able to save the Convention some time in the debate of this subparagraph. Delegate Aronow's comments and Delegate Blaylock's comments both were directed toward access problems, the question of access and trespass. This section does not deal with that question. The section deals with the ownership of the water, subject to appropriation for beneficial uses. It is not the intent and the language does not grant access rights or trespass rights. That specific question was considered in a separate proposal of Delegate Berthelson's, that is, the recreational use to the high water mark. That proposal has

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been introduced in the last several legislatures, is highly controversial, and for that matter -- for that reason, it was not included here. So, this section deals just with the ownership of the water and no with any access rights.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, during the noon hour I contemplated the effect of my friend, Delegate Aronow's amendment to delete for the use of its people. I was shocked out of several pounds of weight, which I can't afford. I want to discuss it because it's a subject that's dear to my heart and is of great interest to the people of Ravalli County and Missoula County, thousands of whom use our water courses in ponds and lakes. I share my friend Aronow's friend's feeling about the dangers of livestock. There are people who will shoot and kill livestock and leave gates open and one thing and another. As a member of the Ravalli County Fish and Wildlife Association for many years, I recall that this problem confronted us and we placed a hundred dollar reward for anyone who would turn in anybody who shot at livestock, and in about fifteen years there has been one case. I know that there are many more, but I think that they are singularly scarce, and I think that we have laws that protect us against such things as much as we can. Anyone who is going to shoot a stockman's critter is going to do it whether we have it in the Constitution or statutes, or don't have it. There are that kind of

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people in this world. Now, at the present time there -- stock watering and recreation are not considered as beneficial uses in Montana. That will be remedied -- that's one of the good things the committee has done in this report -- it's in the next section, unless it's deleted, and I hope that it won't be deleted. I'd like to see the stockmen have a right to water their stock and I'd like to see people who wish to fish and boat use our streams. I think that the water is the water of the people. I don't think that you can say that it belongs to the state and doesn't belong to the people. And, my goodness, if the people can't use what belongs to their state, this is a mockery, a travesty. It's something that we should correct. It is an astounding situation when one considers that stock-growing and recreation are not considered beneficial uses at present. I favor incorporating them under the law. I submit that there are many instances where farmers, landowners, have locked up their land to prohibit people from using -- securing access to streams. I know in the Bitterroot valley there are miles of the Bitterroot river which are unaccessible unless one trespasses. That is the reason why we endeavored to change the law and secure cooperation between the land owner and the fish and game department in providing access strips so that people could get access to their fishing waters. Now, the fisherman is in a different -- and a boater and the water skier and the rest of them who abuse these streams and ponds and lakes are

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in a different position with respect to the water than some other people. We all concede that the man who has a first, second or third water right have the privilege of using that water in such priority as their rights stand. We all concede that beneficial use of water for domestic and industrial purposes is mandatory because we've got to have drinking water and something, and water to perform our ablutions, and we've got to have water for irrigation on the farms and things of that character, but the landowner and the sportsman and the person who comes in from outside, lured in by extravagant advertising of our remarkable fishing potential or hunting potential, they are lured in here and spend their money for licenses. It's one of the biggest industries we have in the state of Montana and we are going to slap them down if we do not provide access. I think we should go farther than that. I think we should see that the fisherman enjoys riparian rights and maybe that is considered in the next section. Now, if the Montana Power Company or the Dakota-Montana Utility or the telephone company or any other utility seeks to go across a stockman's land, whether he has pureblood bulls or poor blood bulls, it doesn't make much difference. They can go across because they possess eminent domain. They pay perhaps a little bit of money to the landowner in order to get their easement but after they pay for that easement, their maintenance crews can go across in taking care of their line as they please.

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Now, I think if we prohibit the use of the streams and the wate the lakes and the ponds, if we prohibit the fisherman or the hunter or the camper or the picnicker who wishes to use the banks of those streams and rivers and lakes and ponds, if we prohibit them from using them, we are doing a disservice to a majority of the people of Montana, a vast majority, and I think that they will react in a manner which we would regret because their wrath would fall upon all stockmen and all farmers who lock up their lands or who have their lands locked up by virtue of adverse legislation. I think that water is for the use of the people, whether it be stockgrowing, industrial uses, domestic uses, recreation, or what-not, and I point out that there are thousands and thousands of people in Montana and visitors from without the state who come in here annually to use our recreational potential who will be very much upset. I call to your attention a splendid book of which you are all familiar and I quote from Daniel 5.25, 26 and 27: mene, mene tekel upharsin, meaning God has marked thy kingdom and finished it; tekel--thou art weighed in the balance and found wanting -- and I am quite certain that we are going to fit that description and fit that warning if we don't heed a little bit of sound judgment.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I would like to ask Mr. Romney a question but I'm not going to because I already

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know the answer. I just wanted to show off and say that was the handwriting on the wall, wasn't it?

DELEGATE ROMNEY: You are right.

DELEGATE SCHILTZ: Would the gentleman, Mr. McNeil, respond to a question, please?

DELEGATE McNEIL: I yield.

DELEGATE SCHILTZ: Mr. McNeil, I must read section three, which we are now debating, with section four and I would like to ask you if this is about the way this thing is designed. As I understand it, we are reserving all this water to the state of Montana in the interests of keeping some downstream state from claiming a better right to it, and then we say what beneficial uses are, and then we provide that the -- that anybody who wants to appropriate that water or claim it can file some kind of a claim and thereby establish a first claim to it as against somebody downstream, is that correct?

DELEGATE McNEIL: I don't think I can give you a yes or no answer to that, Jack. The subparagraph three speaks of the ownership. For the benefit of the Delegates, the right to use water is a property right. This is independent of who owns the water. The ownership really has no value in terms of being able to use the water. The value we foresee is, if the state can say it owns the water, at least it can stand in court in an adjudication with a downstream state or with the federal government and say, we own it so therefore we've got a right

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to talk about it and defend it, but it's still subject -- and this doesn't affect in any way, now, the right of an irrigator to use the water. That's the valuable property right and it can be sold separate from the land or with the land.

DELEGATE SCHILTZ: Will the gentleman yield to another question?

DELEGATE McNEIL: I yield.

DELEGATE SCHILTZ: Well, again I say, I'm considering what action I'm going to take in sub three by what I read in sub four, and starting with line sixteen, I see a diversion can be made -- let me see -- a diversion or a development is not required for future acquisition for the foregoing uses. Now, as I read that, it will mean that somebody can go into the courthouse and say, I appropriate a hundred inches out of Yellowstone river for recreation purposes, and will that then reserve that hundred inches for somebody in -- or for the state of Montana and that person?

DELEGATE McNEIL: Mr. Chairman, that is correct except you have to read that next sentence with it. The legislature must establish how a water right is to be established without a diversion and may establish priorities.

DELEGATE SCHILTZ: Thank you.

DELEGATE McNEIL: You can't pick out any one single part and read it independently or it won't make sense. And while I'm on my feet, I might say I failed to say that because

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subparagraph three does not speak to the problem that concerns Delegate Aronow, I would oppose his amendment and support the article as drafted.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I rise in opposition to Mr. Aronow's amendment for reasons different than what have been expressed by Mr. McNeil. As I understand the water law and the principle of the use of water in Montana, it is this--that the state of Montana does not actually own the water. The state of Montana owns the water for the use and for the benefit of the people of this state. Now, there's a vast difference. If the state of Montana, as this amendment would then have this provision read, if it owns the water it can with impugnity negotiate for its sale. But if the state of Montana is, as I've always understood it to be, a trustee of the water in Montana for the use and benefit of the people, it may not enter into the negotiations and sale of the water of the state of Montana without the consent and approval of its beneficiary, the people. Now, water rights are never owned. Nobody owns water. All that you ever acquire is the right to the use of water and if you'll look at this subsection three, you will note that the language to be struck is, for the use of its people, and I have objection to that because I think that when you add the terminology, for the use of its people, you are reinstating the theory under which water has always been adminis-

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tered in this state and you are also preventing any bargaining of the water of Montana for sale outside. Now, secondly, insofar as this problem of trespass is concerned, the language that we're talking about is not language that has any application whatsoever to trespass one way or another, and to ease your minds on this, let me tell you that I have had some rather personal and sometimes disagreeable experiences in the supreme court on this very problem of access to the public domain. For many, many years it was the unquestioned rule in Montana, and I can even give you the name of the case -- Herrin versus Sieben -- that gave recognition to what is known as the implied easement theory, and the theory of that was that any man had a right to get to the public domain. And, the court said, we'll recognize that right even to the extent of permitting you to cross private property if necessary to get to that public domain, but we will put this limitation on it. You must go to the owner and you must say to him, Mr. A., I want to cross your land to get to the public domain. And, if Mr. A. says you may not cross, then you may say -- or, Mr. A. can say one of two things. He can say, you may cross and here's the route you will take. He may designate the route. If he says you may not cross, then you, under the rule in Montana, have the right to designate your own route to get to the public domain. Now, what are we talking about when we talk about public domain? We are talking at least about navigable streams and in general

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you are talking about the area between the high water mark and the low water mark, which is considered to be on a navigable stream public domain, so that, insofar as a fisherman's right is concerned and if you follow the law in Montana as it is today, you have that right if you request it. Even if it's denied, you may still cross. That, at least, is the theory of implied easement as the rule is laid down today in Montana. So, this language which Mr. Aronow would have struck has no relationship whatever to the right to get to the eminent domain -- the right to get to the public domain. It does have a great deal to say about the ownership and the character of the ownership of water in Montana, and I urge you not to accept the amendment.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President, I have a substitute amendment of three words that I believe will solve our problem. After the word in line eight on page four, after the word, state, insert these three words: and its people. So, the paragraph would read: All surface, underground, floor, and atmospheric waters within the boundaries of the state of Montana are declared to be the property of the state and its people, period. Delete everything else. Thank you.

CHAIRMAN GRAYBILL: Very well, Mrs. Erdmann has proposed an amendment which would put the words, property of the state and its people, period. Do you intend to take out the

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phrase, and subject to appropriation for beneficial uses as provided by law?

DELEGATE ERDMANN: Yes, Mr. President. I don't think it's at all necessary. Beneficial use is paragraph four and priority of appropriation is covered very well in section five.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I would resist Mrs. Erdmann's motion there because -- and speak for keeping the language as is in section three. I think it's important to keep that language, subject to appropriation for beneficial uses as provided by law, because this will spell out that the legislature may be able to act in that area in the future. The words that Mr. Aronow wanted to delete -- for the use of its people -- are very important. They were taken out of the Colorado constitution and have been tested in the U. S. supreme court -- this is my understanding -- and have been very beneficial to the people of the state of Colorado in water battles where the state was arguing with the federal government over water that arose on federal lands. So, I would recommend to the committee that we not adopt either one of these amendments and take the original language in section three -- subsection three.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, fellow Delegates, my Delegate Proposal Number One Twenty-Seven is the language

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that appears in section three, except for the language, for the use of its people. That was not left out intentionally. My thinking at the time of the drafting of this was that the state and the people would be synonymous. If it's beneficial to have it in there, I think it's important that we leave it in. I very reluctantly argue against Mrs. Erdmann's amendment to strike out subject to appropriation for beneficial uses as provided by law because section five really doesn't say that. It says, priority of appropriation for beneficial use shall give better right. It doesn't say that the legislature can make additional beneficial use. I think the sense of this whole article is to protect Montana water, to make a strong statement that we own our water, and protect it for the future use of our state and our people from downstream appropriation. They started using their water a long time before we had our opportunity. It perhaps is our greatest resource. We don't deplete it. We have it again and again. So, there's nothing in this article intended to have anything to do with the question of relationship between landowner and fishermen or sportsmen. I don't think properly the constitution should get involved in that. You really can't anyway. The deed you have to your ranch lands has certain restrictions and certain easements in it, and anything that's put in this Constitution isn't going to change your existing property rights. This whole thing is not aimed at access or it is not aimed at anything to do except

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to say we in Montana. It's a broad, fundamental concept that this is Montana water, we want to keep it for Montana and as water gets more scarce -- when someone downstream wants to make an appropriation, it may at least give us a leg to stand on and say, we reserve this to the use of our people as long as it's within our borders. As soon as it leaves the state, of course it's gone anyway. I don't think that we want to get into the recreation access situation in a constitution. There's no flexibility provided and it just has no place in here, and it simply would be unworkable. So, I would have to argue against both of my good friends' substitute motions and think the way the language is right now will accomplish the purpose that was intended if that's what you want to intend in this.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I think it maybe would help clear a little air if we actually knew what the Colorado constitution says, so I will read to you from article sixteen, section five: Water streams public property. The water of every natural stream heretofore not appropriated within the state of Colorado is hereby declared to be the property of the public and the same is dedicated to the use of the people of the state, subject to appropriation as hereinafter provided. Colorado statute section 148-21-2. Declaration of public policy. It is hereby declared to be the policy of the state of Colorado that all waters originating in or flowing

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into this state, whether found on the surface or underground, have always been and are hereby declared to be the property of the public, dedicated to the use of the people of the state, subject to appropriation and use in accordance with law. I think that the article our committee came out on this does the best job of anything that I've heard so far and I very strenuously resist both motions to amend.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. Chairman, I'm convinced. I will withdraw my motion.

CHAIRMAN GRAYBILL: Very well, Mrs. Erdmann's motion is withdrawn. All right, the issue -- oh, Mr. Conover.

DELEGATE CONOVER: Mr. Chairman, I rise in support of the original proposal. I -- in sympathy with Mr. Aronow. I have had the problem he's been talking about and I want to say to you, I have never refused any fisherman or hunter on my land. But, I want to say to you that up until this year, for the past, maybe, ten or fifteen years, I have lost from two to five critters a year but I still stood my ground and I figured maybe someday that the hunters would respect me and so would the fishermen. And, I went through a lot when we had fishing there. They left my gates open, they tore my fences down, and I still never got mad at them. So, I don't think that we can put in the Constitution to regulate our hunters and our fishermen because I think that's going to have to be

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done between the people and the hunters and the landowners themselves, and just like I say, it only takes one apple -- bad apple -- to ruin a whole good box. Thank you.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President, perhaps I could offer something that might put this body at ease and satisfy Mr. Aronow and everyone concerned. If we could add onto section three: This subsection is not intended to authorize trespass over private property except as provided by law. Mr. Chairman, I think this would probably resolve some of the fears that these ranchers have in respect to subsection three. I respectfully move its adoption.

CHAIRMAN GRAYBILL: Very well, you're proposing an amendment to -- let's see, just a minute now -- that would have to be a substitute motion. Now, is your substitute motion going to be in place of Mr. Aronow's and leave the section as is and add this phrase: This subsection is not intended -- is that what you say, said?

DELEGATE WILSON: This subsection is not intended to authorize trespass over private property except as provided by law.

CHAIRMAN GRAYBILL: All right, that will be a substitute motion by Mr. Wilson, which would be added at line ten, page four. Add the language: This subsection is not intended to authorize trespass over private property except as provided

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by law. Mr. Aronow -- or, Mr. Wilson, do you want to speak on that any more?

DELEGATE WILSON: I think enough has been said and I think that perhaps this will resolve the differences that have arisen here.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, I think Mr. Wilson has found a solution for the problem which I have and it will serve the purpose very well, and I recommend the passage of Mr. Wilson's substitute motion.

CHAIRMAN GRAYBILL: Mr. Toole was up first.

DELEGATE TOOLE: I'm just curious. How can the legislature authorize a trespass? I'm not an attorney and perhaps this is a Style and Drafting problem -- is it? Well, how can the legislature authorize a trespass?

CHAIRMAN GRAYBILL: Mr. Toole's parenthetical question has been asked. Mr. Schiltz, do you want to answer it?

DELEGATE SCHILTZ: We'll take a shot at it in Style and Drafting, but I think that Mr. Toole is absolutely right.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: I oppose the amendment. I think the committee's got the sense of what we are trying to do, is make a strong statement of Montana water belongs to Montana and its people. It has nothing to do with trespass. There's no such thing as trespass authorized by law and I think we defeat the

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sense of it and I oppose Mr. Wilson's amendment.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Wilson's substitute motion that the subsection three be left intact and the following sentence added onto it: This subsection is not intended to authorize trespass over private property except as provided by law. So many as shall be in favor of that substitute motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it and it's dead. Now, we're back on Mr. Aronow's motion. Mr. Aronow's motion is to strike the words, for the use of its people. Is there further discussion?

(No response)

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Aronow's motion to amend subsection three by striking the words, for the use of its people, so the sentence reads: All surface, underground, flood, and atmospheric waters within the boundaries of the state of Montana are declared to be the property of the state, subject to appropriation for beneficial uses as provided by law. So many as shall be in favor of Mr. Aronow's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

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DELEGATES: No.

CHAIRMAN GRAYBILL: Mr. Aronow's amendment fails. We are back on the principal section three. Is there further discussion or amendment?

Mr. Mahoney.

DELEGATE MAHONEY: Might Mr. McNeil -- would he answer a question for me, please?

DELEGATE McNEIL: I yield.

DELEGATE MAHONEY: Here on line six you say, all surface, underground, flood and atmospheric water within the boundaries of the state of Montana are declared to be the property of the state. Now, what are you going to do if somebody wants to drill a well? Is he going to have to get the permission from the state of Montana to drill a well on his own land?

DELEGATE McNEIL: Absolutely not, Charley. That has -- this statement of ownership, as explained by Mr. Berg and myself, has nothing to do with the right to use it. Even though the state owns it, it is still subject to appropriation as provided by law. You can drill your well and file your water rights and you've appropriated the water.

DELEGATE MAHONEY: Mr. President.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Last session of the legislature, this thing was tried in the legislature to get just this kind of a thing so that everything would be handled out of Helena.

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You couldn't get a -- drill a well unless you got permission from Helena and this was killed in the last session of the legislature. Now, are we coming in here at this session and trying to do the very thing that was killed in the last session of the legislature? This is what I'd like to know.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, this section does not speak to that question at all. Subparagraph six does, and it retains our present system of water right control at the local level, which is established by the legislature. Subparagraph three, which we are talking about now, speaks of the ownership and not centralized control, which I think is your concern.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Just a short comment that I think has not been mentioned. I sat in on -- as a spectator on the committee as they discussed this problem and it came out at that time that in 1978 the federal government has plans to appropriate all water in Montana to federal ownership and I believe, as I recall, the conversation was that this wording would forestall that effort by the federal government. Now, it is my understanding at the present time the federal government has laid claim to all water that drains into the Canyon Ferry dam and ranchers who do any diversion now are expected to pay Uncle Sam for the water that they are diverting. The consideration I think that lies behind this subsection three is that in North

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Dakota there is now a very large irrigation project. It encompasses, I think, around five hundred thousand acres and I believe their eventual plan over there is something in the five to eight million acre range. Those people are going to have to look to Montana water if they're going to get that land wet over there, and it is this thinking or this recognition that the federal government has in mind when they say -- when they say in 1978 we are going to appropriate all unappropriated water in Montana. So, if the state, through this wording can lay claim in the name of the people to this water and if we can fight -- fight the legal action by the United States government for a period of ten, fifteen, twenty or fifty years, it will give the people of our state more opportunity to develop the use of this water and establish a just and legitimate claim, because that really, in the eyes of the federal government now, is the only way that you can actually claim water out of a running stream.

CHAIRMAN GRAYBILL: Mr. Berg, are you up?

DELEGATE BERG: Yes, I am. Mr. Chairman, I should like to comment on the safety of the water rights in Montana, particularly if they are clearly enunciated in the constitution, and I want to refer you to article four, section one, of the United States Constitution which says, first sentence: Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state.

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Now, this is the section upon which we will rely for the protection of our water rights against federal interference.

CHAIRMAN GRAYBILL: Very well, the question arises on the issue of subsection three of section three of the Natural Resources report. I've forgotten who moved it.

UNIDENTIFIED DELEGATE: Mr. Murray.

CHAIRMAN GRAYBILL: Mr. Murray. Members of the committee, you have before you for your consideration subsection three of section three, upon the motion of Mr. Murray that when this committee does rise and report, after having had under its consideration, that it recommend the same do pass. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: Will the Clerk please read subsection four?

CLERK SMITH: (Reading) Beneficial uses include, but are not limited to domestic, municipal, agriculture, stockwatering, industry, recreation, scenic waterways, and habitat for wildlife, and all other uses presently recognized by law, together with future beneficial uses as determined by the legislature or courts of Montana. A diversion or development work is not required for future acquisition of a water right for the foregoing uses. The legislature shall determine the

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method of establishing those future water rights which do not require a diversion and may designate priorities for those future rights if necessary. (End reading) Subsection four of section three, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, this subsection is the real heart of the proposed change to the water rights. For the benefit of those who may not be familiar with Montana water law, presently there must be a beneficial use; contrary to what Mr. Romney said, stockwatering is presently a beneficial use. However, in order to obtain a valid water right, there must be a diversion of the water from its natural stream. This section is intended to change that and I urge you to recall that in subparagraph one we have protected all existing rights, so this applies only to future appropriations and only to waters that are not now subject to a valid water right. It is intended to permit recreation, as well as stockwatering, to acquire a water right without the necessity of digging a parallel channel and making a diversion. To insure that recreation does not, the day after this might be passed, immediately file upon all the water in the state and foreclose future industrial or agricultural development, we have provided that the legislature shall determine the method of establishing rights which don't require a diversion and, further, indicate that the legislature may designate priorities if they determine

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that to be necessary. The purpose of that is to now permit Montana to claim a use for all of its water that is presently flowing out of the state. Yet, at the same time, leave it up to the legislature so they can devise some system, stream by stream, or river by river, so that future development of agriculture or industry will not be foreclosed by this recreational right. To those who are concerned that to permit this will foreclose future development, I draw your attention to this water resource plan which Delegate Gysler had photocopied and put onto your desks. The minute this kind of a plan ripens into reality, a downstream state or the federal government will be entitled to claim any water which is not now subject to a water right in Montana, and I submit to those who are concerned that recreation is going to be a stumbling block to your agricultural or industrial development in the future, that you are going to have a better chance arguing with the legislature of Montana than you will going down to Austin, Texas, and fighting twenty million Texans. We have provided that the legislature can protect and can establish priorities if necessary, and we submit that this is in the best interests of the people of Montana. In our committee hearings we had witnesses testifying representing farmers' unions, water companies. They all conceded that we must recognize recreation. There is concern as to how to do it. We have left the details of that to the legislature so that recreation and the traditional water users

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can live together for our future water rights. Thank you.

CHAIRMAN GRAYBILL: Mr. Etchart. Let's see -- wait a minute -- Mr. Wilson. You're second, Mr. Etchart.

Mr. Wilson.

DELEGATE WILSON: Mr. President.

CHAIRMAN GRAYBILL: Do you want us to read your amendment?

DELEGATE WILSON: Please.

CHAIRMAN GRAYBILL: Very well, will the Clerk please read the amendment?

CLERK HANSON: (Reading) Mr. Chairman, I move to amend section three, subsection four, page four of the Natural Resources report number six as follows: At line eighteen, page four, substitute the word, may, for the word, shall; and further amend at line twenty, page four, by adding the word, use, between the words, designate and priorities; and further amend at line twenty-one, page four, by adding the following sentence after the word and punctuation, necessary: (quote) Those rights which may be established without a diversion shall be wholly or in part junior in right to those appropriations for which a diversion is made regardless of the date of the appropriation. Signed, Wilson. (End reading)

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President, I think perhaps it would be appropriate to add after diversion, or development.

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CHAIRMAN GRAYBILL: What was that now?

DELEGATE WILSON: After the word, diversion, simply add on, or development.

CHAIRMAN GRAYBILL: Those rights which may be established without a diversion or development?

DELEGATE WILSON: Right.

CHAIRMAN GRAYBILL: That's on the printed material that Mr. Wilson has had passed around. The first line of the bottom four lines, add the word, or development. Then it reads: Those rights which may be established without a diversion or development.

Mr. Wilson.

DELEGATE WILSON: Mr. President, appropriations for recreation, scenic wildlife uses require no investment, so they could promptly cover all unappropriated water in the state. The appropriations for economic uses, which require planning and investment, would then be permanently stopped. This would leave Montana water in the streams for use in downstream states. We believe that recreation, scenic, wildlife appropriations should be wholly or in part junior in right to domestic, municipal, agricultural, stockwater and industrial appropriations. Mr. President, I move the adoption of this amendment.

CHAIRMAN GRAYBILL: Very well, is there discussion on Mr. Wilson's amendment?

Mr. Gysler.

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DELEGATE GYSLER: Would Mr. Wilson yield to a question?

CHAIRMAN GRAYBILL: Mr. Wilson, will you yield?

DELEGATE WILSON: I yield.

DELEGATE GYSLER: Mr. Wilson, we haven't really gotten together as a committee to discuss this because of time, but basically what you're saying is, I think, more or less the feeling of the committee so there's probably not too much objection. But, I think that the first shall that you struck and made may, it would seem to me as though that should be a directive and not a prerogative, and I think that probably the majority of the committee would feel that way, that the legislature should go ahead and do this and prevent future haggling that might arise over these things, so would you consent to changing that word back to shall, like it was, because we figured it should get done.

DELEGATE WILSON: Mr. Gysler, I wouldn't have too much objection. I spent all one day in court trying to determine what the difference was between may and shall, and the court determined that they both meant the same thing.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I have a substitute motion if the Clerk will read it, please?

CLERK HANSON: (Reading) Mr. Chairman, I move to amend section three, subsection four, page four, lines eleven

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through twenty-one, inclusive, thereof of the Natural Resource and Agriculture Committee majority proposal by deleting the same in its entirety. Signed, Etchart. (End reading)

DELEGATE ETCHART: Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, Mr. Etchart has moved by a substitute motion to delete section four.

Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, members of the committee, I have a vested interest or a vital interest in this question I want to disclose to the body. I'm a rancher. I'm greatly dependent on future water development, and I am a member of the Glasgow board of directors of the Glasgow irrigation district. I am vitally interested in the water rights that are in this section of this article. Last Monday, I was privileged to visit Dave Drum and Leon Miller's feed lot at Shepherd, Montana, near Billings, where I viewed thirty-five thousand beef cattle in a brand new, shiny feed lot which has all of its wiring underground and has the latest environmental safeguards imaginable. I feel this sort of development is a wave of the future for the economic development of our state, and a great share -- Dave, he's too modest over there -- but a great share of a development of this type is dependent upon corn sileage and forage production from irrigation developments. If we want economic development in Montana, we must also provide for water development. I move to delete section -- sub-

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section four because this material contained therein is statutory and is highly controversial. It has failed enactment by the legislature the last few sessions and would certainly be a millstone around the neck of this new Constitution in the form as it is printed in the committee report. Subsection three, which we just passed, does all that we actually need to do in writing this Constitution. It provides the legislative machinery to enact the material which is presented in subsection four. Subsection four is legislative in content. It contains highly controversial proposals which have failed the test at the last few legislative assemblies, as I mentioned before. This has no place in the basic document that we are writing for the state of Montana. Consider what the state of North Dakota has proposed in its new constitution. Just twenty-four words is all they needed. The language that North Dakota is proposing reads as follows: (quote) All surface and subsurface water shall remain forever the property of the people and subject to appropriation for beneficial uses as provided by law. Simply stated, North Dakota reserves all their water for the use of their people and as the legislature decides by law. This is flexible, as our subsection three is flexible. It will meet the needs of the future water developments of the state and yet it will protect the water of the state for the people of Montana and for our children and grandchildren. Compare that to the legal pitfalls proposed in subsection four. Subsection

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1 four makes recreation, scenic waterways and habitat for wildli
2 a beneficial use of Montana water. It further provides in line
3 sixteen and seventeen, a diversion or development work is not
4 required for future acquisition of a water right for the fore-
5 going use. In addition, section five provides for priority of
6 appropriation. This means all beneficial uses are thus in com-
7 petition to lay claim to Montana's water. The users other than
8 recreation, scenic waterways and habitat for wildlife, which --
9 who are, incidentally, the future water developers in the state
10 are at an immediate disadvantage because any of their uses re-
11 quire the expenditure of considerable sums of money and it
12 would take a great many years for these things to happen. De-
13 velopment takes time and it takes money. Now, how much time
14 and money does it take to appropriate all the unappropriated
15 waters in the state for recreation, scenic waterways and habi-
16 tat for wildlife? Since the water does not have to be impound-
17 ed or diverted, there would be no cost to the fish and game
18 people except the legal cost of filing on the water. This would
19 guarantee that the fish and game would be able to beat most
20 other potential water users and developers to the unappropria-
21 ted water in our state. I had a telegram spread on your desks.
22 I think if you'll look -- about a day ago -- if you can find it.
23 This telegram is from Mr. Harold Aldrich, who is regional dir-
24 ector of the Bureau of Reclamation. He covers about a four
25 state area and, incidentally, he's in command over in North

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Dakota, where a lot of our water is going, and is planning the developments that Mr. Drum mentioned. But, I would call your attention to his analysis of this water article as it refers to subsection four. He says, I believe subsection four of section three in its present form should be omitted because it will halt future economic development in Montana. Under section three, subsection four, appropriations for recreation, scenic, wildlife uses require no investment so they could promptly cover all unappropriated water in the state. Appropriations for economic uses which require planning and investment would then be permanently stopped. This would leave Montana water in the streams for use in downstream states, thus stopping development. Members of the committee, I feel that we should delete subsection four. I feel this is statutory, something that the legislature should do, and I ask your support in it.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I, of course, rise to oppose Delegate Etchart's motion to delete. I agree with him that it is legislative and statutory in nature but I submit, so is everything else in this Constitution that goes beyond the Ten Commandments. It has been put in here because the legislature of Montana has refused to act. They have refused to recognize the interest of recreation in our waters. I submit that this is an ostrich approach to the problem, or refusal to approach the problem, and as a result of the non-action of the

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legislature, substantial quantities of Montana water are leaving the state every day and our own law does not provide any claim by anybody to that water. Mark referred to the fact that there is no economic expense necessary to appropriate water for recreation. I submit that there will be no economic expenditure necessary for a downstream state or the United States government to claim this same water that is departing the state. If we are to save the water for the state, we must provide that we have a valid claim to the use of the water or we'll lose it. I strongly oppose the motion to delete. I would also like to mention that the telegram to which Delegate Etchart referred contained another paragraph: If it is to be retained, believe we should stipulate that recreation, scenic, wildlife appropriations should be wholly or in part junior in right to other rights. I trust that you will recognize that language in Delegate Wilson's proposed amendment.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I'd like to ask Mr. McNeil a question.

CHAIRMAN GRAYBILL: Mr. McNeil, will you yield?

DELEGATE McNEIL: I yield.

DELEGATE RYGG: Mr. McNeil, first of all I want to say that I know nothing about water rights, but I had a phone call yesterday regarding this particular section and the man's question went something like this, that right now, he said, I

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understand that anyone who wants to put in an appropriation for water for something -- for whether it be fishing or recreation of some kind -- could do so. Then, if this man later on wanted to buy that land or rent that land and wanted to use it for irrigation purposes, then he could not. Is that correct?

DELEGATE McNEIL: No, that is not correct unless the legislature would so provide. Now, the way the majority proposal is drafted, the legislature must determine the method of establishing a water right without a diversion and may establish priorities. So, the question you've posed me, I suppose it would be true if the legislature would say -- and I doubt that they would do this -- but if they would say a fisherman could file a water right in Farmer Brown's field and have a prior right. If they would -- if the legislature enacted such a provision, I suppose that that question would have to be answered yes, but it's up to the legislature and I can't believe they would ever go that far.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Would Mr. McNeil yield to a question, please, Mr. Chairman?

CHAIRMAN GRAYBILL: Mr. McNeil?

DELEGATE McNEIL: I yield.

DELEGATE NUTTING: Mr. McNeil, is it your opinion -- the committee researched this considerably -- is it your opinion that if we do not have actual filings on these -- on the

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water of Montana that we could lose it to downstream interests. We must have actual individual filings?

DELEGATE McNEIL: Mr. Chairman, absolutely, and that's the real heart of this, Dick. Right now, our own law, our Constitution and our statutory law and our case law does not anywhere provide that recreation, except for the blue ribbon trout stream bill, which applies just to a few blue ribbon trout streams -- with that single exception, we have no claim of any kind to the water that's flowing out the Missouri River, for example. In litigation or negotiation with the downstream states or the federal government -- if I were representing the federal government, I would quite simply say, I'm going to take all the water that's leaving the state, drain it dry, and you, representing the state of Montana, could not even say, but look at our law. We're at least claiming it ourselves. We don't have anything right now that even says we have a right to use it. I should go one step further in explaining that. Now, by subparagraph three we have provided the state has ownership for the use of the people, but in litigation or negotiation with a downstream state, the federal court would look not only at the ownership but also to the use and say, if you're not -- even though you're claiming you own it, if you're not using it, it's subject to appropriation, and we could lose it.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Will Mr. -- Mr. President, will Mr.

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McNeil yield to a question?

CHAIRMAN GRAYBILL: Mr. McNeil?

DELEGATE McNEIL: I yield.

DELEGATE DAVIS: In this section, Mr. McNeil, assume it would pass and that you would declare all the unappropriated water now appropriated for scenic, wildlife, recreational and habitat, and so forth, what then will prevent it from going on out through the state. I mean, I don't follow your argument that this will prevent it from running downstream to the neighboring state. Are you going to impound it?

DELEGATE McNEIL: Mr. Chairman, nothing would prevent it from running on out of the state. Water is going to flow that way anyway. The point is that if a downstream state makes an appropriation they can then drain it dry, they can divert it, they can do anything they want with it, and they would have a prior right. They would have the absolute right to pick it up and take it away.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. Chairman, I rise in opposition to Mr. Etchart's motion to delete. At first I thought that this section on beneficial uses was unnecessary, but as I sit here, I realize the main point is rivalry now between states for this water that originates here. And, if all of the water that is not appropriated they can file for downstream -- we are a state with very sparse population and so it's going to be hard to pro-

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ject ahead very accurately our industrial or irrigation needs but certainly if we throw in here the area of recreation uses, we are going to be able to document and prove need for a greater sum of water when we all get together at the end of that moratorium and I would hate to see us not have this area of recreational use that we could document, so I support the paragraph as drafted by the committee, but I think it's very important to add Archie Wilson's paragraph.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: I rise in support of the majority proposal. I am in complete concurrence with Mr. McNeil today and I would like to say that when I attended water meetings in 1965 before this moratorium was imposed, I attended meetings at which representatives of California and Arizona and New Mexico looked to this area and looked to it, I think, justifiably because they are going to be in big trouble. I attended a meeting in Salt Lake and they talked about desalting and they talked about weather modification. They are searching every area for water but the obvious way to go is to divert water from the Columbia Basin and the Missouri Basin to these dry areas. Now, I have before me the most recent study -- now, this Colorado River Basins Act included many factors besides this moratorium that Scoop Jackson had imposed that expires September thirtieth, 1978, it also had the fact that an inventory must be conducted in the eleven states involved. Now, we've reached

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the point in Montana where this inventory will be complete by late '72, possibly early '73. Now, after all the water in the state is inventoried and classified, we start estimating our needs. According to the current law, here is what we have. We estimate our population, which we all know is not very high, and our per capita water needs. Next, we estimate our industrial water requirements and that means we try to provide for future industrial growth. That's difficult to estimate, we know. Then we determine our agricultural productivity and irrigation potential. Then we evaluate the water project sites, costs and benefits. Then, there's the projection of the state's overall water requirements, the adequacy of supply, and suggested actions to augment the supply and solve problems. I have talked to experts in this field and they say that when all these are taken care of that we really will not have justifiable reason for keeping water in this state, other than in those areas, unless we have recreation stipulated as a beneficial use. And I have here in my hand the projected progress report for the western U.S. water plan. Now, this is the important one because this projects to the year 2020 and even though this moratorium exists, the studies, the reconnaisance studies are going on, and already plans are being made on how this water can economically and feasibly be diverted to the dry southwest. And it will be economical and it will be feasible and they will do it, and I think we have to have recreation as a beneficial

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use. I have heard people say, well, why not treat water as a commodity like oil. Why not sell it? We can become rich this way. But, if we sell it then they have right in the future. Maybe we won't need it for a few years. They'll have the right in the future to this water which we sell. And then if we develop the right, that's it. When I attended these meetings years ago, I'd hear people in the drier -- in the areas of the southwest say, well, it doesn't make sense. We need the water and you don't. Yet, the representatives from Washington, Montana and Oregon would say, well, we have the water here. Why not come to us where the water is, rather than have the water diverted down there. It just doesn't make sense not to take advantage of this beautiful resource and to establish recreation as a beneficial use. I completely support you today, Mr. McNeil, and your majority report.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President, I'd like to ask Mr. McNeil if he'd answer a question.

DELEGATE McNEIL: I yield.

DELEGATE STUDER: Under section three, under the wording, use of its people, could not recreation and wildlife get an appropriation for water?

DELEGATE McNEIL: If the legislature so provided, yes.

DELEGATE STUDER: That's all.

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Mr. President.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: I have wires from three ditch company officers and phone calls from a fourth, asking that this section four should be deleted as dangerous and unnecessary. Now, these ditch companies represent probably hundreds of people and many ranchers in the vicinity of Yellowstone, Big Horn counties, Custer county there, so I would heartily support Etchart's amendment.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: If I may, I would like to take a trip to North Dakota with Mrs. Reichert.

(Laughter)

DELEGATE DRUM: I feel sometimes we have been conquered by North Dakota and they never really fired a shot.

CHAIRMAN GRAYBILL: You've got to show the relevance of your proposal --

DELEGATE DRUM: The relevance will emerge, Mr. Chairman.

CHAIRMAN GRAYBILL: -- to debate here.

(Laughter)

DELEGATE DRUM: It's a genuine relevance, sir. The facts of the matter are these and let's look at the facts. The people in North Dakota, as they develop their irrigation projects over there, are establishing very valid rights to the

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water that flows through Montana. Now, this water is always going to flow through Montana at some level and the fish and the game -- and I'm a fisherman and I'm a hunter and I love that fresh, clear water out there. But, as the acres of irrigated land are developed in North Dakota, and we are very slow about it in Montana but we have as much potential as they have over there, but as they establish rights to that water, from that point on, once they are using all of the water that comes out of Montana on their irrigation projects, we will have no legal right to do anything with that water except go fishing in it, to go boating on it, and it's going to be here, true, but the thing this body should recognize is the words of Mr. Aldrich -- you are closing out any further development of irrigated land in the state of Montana. From the point where the North Dakotans -- you have a question mark on your face, Mrs. Reichert, and I would like to say this as clearly as I can. Once they claim the water that is running through Montana, at that point we will never be able to develop a single irrigation project in the state of Montana. Now, to go back to Mr. Etcharts words, complimentary words about the cattle feeding business in Montana, and I would like to spread it out to all of the agricultural potential in Montana, and I would even like to go back one step further to the finance committee that we have been sitting in, a group of us, trying to come up with a article. We have listened to witness after witness that has said, we

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need a bigger piece of the pie. We need more money and no one, no one talked in terms of making a bigger pie. The solution to most of Montana's problems are to bring agricultural development, some type of beneficial and desirable industrial development, and it will make a better, happier place for all of these people to live. So, if we can adopt Mr. Wilson's amendment to this section, I am sure that we will give a junior right to the beneficial uses, such as the sporting, the visual, the boating and that type of use of the water, but we will preserve, because of the previous paragraph, some of the rights we hope to preserve that Montana can lay claim to this water and as we develop it we can continue to use it here in Montana rather than in North Dakota. And, thank you for your attention, Mrs. Reichert.

CHAIRMAN GRAYBILL: Mr. Anderson.

DELEGATE OSCAR ANDERSON: I would like to echo. I live just a few miles away from the North Dakota border, and eleven years ago I made a survey -- I think it took us seven days -- of the new Garrison diversion project they were thinking of at that time, and I spent this whole seven days looking over all the area that they intended to irrigate with water that was flowing out of Montana. Now, this Garrison diversion project was cut back somewhat because some of the lands couldn't take the water without waterlogging, but it's still a mammoth project and I want to call attention to the fact that we'd

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better make sure that we keep the use of this water of Montana to the extent that we are able to do so.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, I certainly join in Mr. Wilson's amendment, if we are going to adopt subsection four, which in effect, of course, would give wildlife and recreational uses a junior right over other needs for the water here. The fact -- now, we spent a lot of time this morning on the matter of the coal reserves here. We have the last big coal reserves in the United States right in this area and you can be sure that industry is going to come here. Now, Oak Ridge, Tennessee -- I've spent some time there. The only reason that the Atomic Energy Commission developed that plant at that location is because they had at that time large reserves of coal and a lot of water. We have tremendously greater resources of both of those than they had in that area and this morning on the radio, it was -- there was some discussion on a news broadcast I heard that the Atomic Energy Commission is considering developing a large, billion dollar atomic energy power generating plant somewhere in eastern Montana. It's only talked of, certainly no fully developed plan, but I think that it might come. The uses of water and coal for those things are a natural. We have an ample reserve of them and they certainly should have prior rights over recreational uses. So, I would join Mr. Wilson's comments if we are to adopt sec-

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tion four -- sub four.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, I would like to try and ask and get answers to a couple of questions. I think Delegate McNeil, if he would yield.

CHAIRMAN GRAYBILL: Mr. McNeil?

DELEGATE McNEIL: Yes, I yield.

DELEGATE FURLONG: My question has reference to -- it would be lines eighteen, nineteen, twenty and twenty-one on page four. Let's assume for the purpose of my question that I live on a stream now and I have some right of diversion and there is existing diversion left, in other words, not all of the stream flow has been diverted by prior right. Are you with me so far?

DELEGATE McNEIL: Yes.

DELEGATE FURLONG: Now, under this proposal then it is possible that the remainder of the water not at this time appropriated could then be appropriated under this blanket procedure that you have.

DELEGATE McNEIL: Yes, although the way you have phrased that question, there's no change from our present water law. The water that's in your creek now that isn't appropriated, I can appropriate it; if I put it to a beneficial use I have acquired a valid water right to your unappropriated creek.

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DELEGATE FURLONG: Right, but I want to be sure in my own mind that it could then be appropriated in its entirety.

DELEGATE McNEIL: Yes.

DELEGATE FURLONG: All right. Now, my second question -- may I ask another question?

CHAIRMAN GRAYBILL: Yes.

DELEGATE FURLONG: Mr. McNeil, if, because of that question -- you made reference to a telegram -- I've forgotten the man's name -- Harold Aldrich. You made reference to his suggestion on three-four that if the majority proposal is to be retained that the junior rights should be given to these appropriations. My question is, does the majority -- I understood Mr. Gysler to indicate that, but does the majority proposal or does the majority group support Mr. Wilson's proposed amendment which would, in fact, make it a junior right?

DELEGATE McNEIL: Mr. Chairman, in answering that question, the majority proposal as drafted contemplated that the legislature would do just that. However, we heard testimony from many experts in water law, primarily Professor Stone at the University, and he suggested, don't lock priorities into the Constitution because they may change. In addition, they may be different on one stream than another. They quite certainly would be. As far as Delegate Wilson's proposed amendment is concerned, this is what we contemplated the legislature would do. I still think that's the proper approach. However,

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I could -- I could live with it and would certainly not oppose it if this will satisfy the ditch companies and the irrigators. We did not -- there was no intention that any fish would ever stop development of irrigation. That is not the intent. However, if we ignore recreation, we are going to lose our water. It's just that simple. We felt, or the majority felt in drafting that, that the question of priorities should be left to the legislature to be applied to each specific stream or water district or so forth, but if there is great concern about this, I think the proposed amendment of Delegate Wilson's would assuage the fears of those who think that recreation would foreclose development and because of the language, shall be wholly or in part junior, I think that would still leave the legislature enough flexibility as was suggested by one of the ditch companies to permit a minimum stream flow in some areas where they're present. This couldn't, of course, affect any present water rights but where there are unappropriated waters, I think this would be broad enough language to still permit the legislature some flexibility, so I would -- although I think we should pass the majority report as written, I would not oppose Delegate Wilson's amendment.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, I think this is probably one of the most important things that will come before this entire Convention this whole time, is water, and we're

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sitting around here and we're quarreling and arguing about our -- amongst ourselves, and I want to answer Mr. Etchart in regard to North Dakota. That is a water importer state, and the Missouri system, eighty-three percent of the water of the Missouri system comes out of the states of Wyoming and Montana. Montana puts it in through the Yellowstone and a little bit down -- it isn't too much -- comes out of the Little Missouri. The rest of it comes out of this great state of Montana, east of the Continental Divide. Now, what they're trying to do as fast as possible downstream, both in North Dakota and in South Dakota, are trying to lay claim to this water. North Dakota originally -- the Garrison diversion conservancy district, two hundred and fifty thousand acres of land. Now, down in South Dakota, they have a new proposal with a hundred and fifty thousand acres of land, all coming out of this great state -- eighty-three percent of it is coming out of these two states. Now, if we sit here and argue amongst ourselves, we're going to just make it so much better for them. Now, I happen to know personally the man that drew this plan that you're looking at. I know him personally. He's a very good friend of mine. This takes out in western Nebraska, going to take out of this system clear down below to the great state of New Mexico and it isn't in Arizona but it's in New Mexico. They are not crossing the Divide in west Texas. When he talked to me about this, I says, O.K., then you go out and get the Moapa project which

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1 starts in Alaska, and for every acre foot of water you take out
2 of the state of Montana, you put one in. This is what I want
3 I've stood on it a long time. I've been -- Arlyne Reichert --
4 I have attended many of these hearings on water and to me it's
5 the state secret of this state to -- now if we don't lay some
6 claim to this situation, we can stop the coal production in
7 eastern Montana but to one thing, shipping it out on rail.
8 We'll have no way to get -- because we won't have water to de-
9 velop the necessary steam for the cooling that's necessary. I
10 see a great future down there. Now, as soon as the dry years
11 come again, and they will, you're going to find a clamor for
12 irrigation because, as to Mr. Drum and Mr. Etchart both stated,
13 feeding of cattle in this state is a new industry and I cer-
14 tainly would like to keep the dollars here. There's a great
15 asset in keeping that livestock, that steer here until he's a
16 yearling. We'll get taxes off him. We don't get a cent of
17 taxes off of it as a calf if it's shipped out of this great
18 state. Let's go on a little further with this. If we have to
19 come out and have these free flowing streams, we're going to
20 have them. We have already given the downstream states nine
21 foot channel from the -- from Sioux City down. Great Governor
22 Sam Ford, back in 1944, testified in Washington against the
23 nine foot channel from downstream there. He says, what you're
24 going to do is taking Montana's water. Now, this is the first
25 development was that you took the stream and says you must let

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this much water downstream. We have an awful time when we go down in eastern Montana when the droughts come. Whenever at Glendive -- and I think both Mrs. Cross and Mr. McDonough will recognize -- when the locks start showing in the river, then they've got to slow up irrigation down in the number two project on the Yellowstone, and that is the project at Sidney. First call is Huntley; second becomes the other. Now, we are finding these people trying to delve in and I think it's time for us to quit fighting amongst ourselves. Let's unite to save the water for this great state, and I certainly agree that this can work if we can get Mr. Wilson's proposal to come some balance in here. Now, you may not agree with it but I think it's a problem that maybe we can satisfy because all of the telegrams I have received has said, get rid of section four. I want section four and I think possibly the amendment of Mr. Wilson's would make it correct, and I certainly hope the substitute motion does not prevail.

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, I am rising here mostly in a point of information for myself. I didn't miss very much of the deliberations of our committee but occasionally I did have to be gone. This term, junior, bothers me. According to the dictionary, it says lower in standing or rank and inferior or subordinate. I wonder how this affects this claim to water if Montana ever has to go in court with the U. S. fed-

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eral government. C.B., could you clarify that for me? I'm just not sure what this does if we add this to section four.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I'm not sure, Louise, I do not know and I don't have a crystal ball to predict what some federal judge would do. Delegate McDonough just mentioned a -- made a -- asked me a question that I think goes right to the heart of this. If we put in our own Constitution that recreation is junior rather than leaving it up to the legislature for specific waters, that at least a downstream state could claim all right because recreation is junior in your state, our claim for irrigation is senior to your own claim for recreation and get around our whole purpose here anyway. I would have that concern.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, I hate to speak on this issue but it's so important, I would like to speak to the junior right. Assuming that all the water is appropriated for recreation, that means you have to leave it in the stream. We constructed a dam in Beaverhead county, which works for Beaverhead and Madison county, where we appropriated water and stored two hundred thousand acre feet, which makes a great recreational area without any concern for access -- people can come and go. We have stabilized the stream flow for miles where the fish used to die. Now, recreation, the water has to stay in

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the stream. We could not have constructed this dam if recreation had appropriated and said, we want the water down here for recreation. It would have flown the creek and on out of the state. So, if you have a junior right, that means we can still have small watershed storage projects. They store it and release it. It gets back in the stream. Or major storage projects within our state. But if you take the position that your recreation right is equal or superior, if you appropriate all the water in Montana streams that's unappropriated and say this is recreational water, then we cannot appropriate it upstream subsequently for watershed storage projects which subsequently gets back in and makes a beautiful recreational situation. That's the thing that concerned my question when I asked Mr. McNeil how are you going to keep it from going out of the state. Incidentally, the Clark Canyon dam in southwestern Montana would have never been constructed. The fish and game department opposed it. They came to the legislature and said, we want to appropriate all the unappropriated water. The only water that's unappropriated is the high water. Their theory was, we'll save the fish from dying when the water is low. Well, all that water is already appropriated, so it's only the high water and, of course, that high water is all the way well on its way outside the border of the state of Montana when it's needed when the water is down. So, they would not have approved this dam. You would have had to go through them

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to see whether they approved of it. Now, their philosophy has changed entirely since that time. They've seen the benefit of a stabilized flow of water all summer long downstream. It has made tremendous difference on the fish and wildlife. There's access, there's flow all the way down for many, many miles and you've got a great deal of recreational thing that would not have come into being if all this water were tied up in a recreational lock-in. That's one reason why I'm not going to object to section four if we can get an amendment because I realize so many people think that they are the only ones for recreation -- it's a new idea in their heart. If you don't vote the way they do, you're a company man, and all the other insinuations that have been made on this floor here in the last few days. But, there's a lot more to these very important projects and this is one that I speak to at length because it is so important to the water. It's made both recreation and it's made both economy in southwestern Montana very harmonious. It's improved both and we have a great recreational area there. We wouldn't have had it if the recreationalists had had their way, or the environmentalists that are opposed to dams, at that time. So, there's some harmony that you have to strike in these things. It has worked in Montana and will continue to work. That's why any right, I think, you're going to have to put down, it has to be junior if you want to be able to have upstream projects. That water gets in the stream, fine. It's

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for recreation and it's always been for recreation and wildlife habitat or anything, as long as it's rolling by there it's going anyway, if it's a valid appropriation for federal purposes. So, I did feel I should put this in the record because it's that important. It's one of the most important issues in our Convention, I think, when you think of future Montana. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Etchart's motion to delete section four in its entirety, and I don't wish to cut off debate, but let's start narrowing it down and hold to it. Mr. Arbanas, did you wish to speak?

DELEGATE ARBANAS: I'll wait until after this vote.

CHAIRMAN GRAYBILL: Very well. Mrs. Erdmann was next.

DELEGATE ERDMANN: Mr. Chairman, the man who sent the telegram and asked for the deletion of section four is Harold Aldrich of the Bureau of Reclamation, and for the record, I think we should be reminded that the Bureau of Reclamation did not even record a water right filing when they completed their Canyon Ferry project in 1954, and a year or so later, that same bureau claimed all the surplus water above Canyon Ferry dam as storage in that reservoir. The bureau further stated that any person from that date appropriating water in that entire drainage area above Canyon Ferry would hereafter have to pay the bureau for it as the water had already been

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consigned as storage in their reservoir. And, I want you to think about that when we consider deletion of section four.

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: Mr. Chairman, members of the Convention, I think another example of the word, junior, which might have some bearing here would be that junior is the status Montana seems to have often in the federal system of states, and in connection with water, it's the position we could have if we do not maintain the strongest possible position in our Constitution. I would urge support of the provision of the majority report as originally drafted by them.

CHAIRMAN GRAYBILL: Very well, is there --

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, in view of the fact that nearly all water in Montana, other than flood water, is already appropriated, most of the water that we'll get hereafter is going to be impounded water. All of the -- contrary to what my friend from Dillon said -- all of the environmentalists have not always been against dams. I recognize Delegate Harlow over there, who worked hard for Paradise dam. I did the same thing. I think we're both environmentalists, and I feel that most of the water that we are going to get for recreation is going to be similar to the water that the Delegate from Beaverhead county spoke about and the Clark dam. It's going to be impounded water which releases water all the time

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as it does up in the west fork of the Bitterroot from the Painted Rocks dam, and I think we've got to have that water and if we're going to have it, we're going to have to get it from impoundments, and I think recreation is a multiple use and we enjoy it now and we should accelerate it.

CHAIRMAN GRAYBILL: Mrs. Bates was up and then you may close, Mr. Etchart.

DELEGATE BATES: Mr. Chairman, fellow Delegates, I feel that if -- first, I want to say that in noting that -- in section four it says, a diversion or a development work is not required for future acquisition. Now, in Mr. Wilson's amendment, which I feel must go with this section, it mentions the junior right of appropriation for diversion of water. Diversion is taking the water out of the canal. I'm wondering how, for recreation, we are really going to hold this water when it flows by and goes into Dakota or the other states? And, how can we get right -- get the right to this water and the appropriation? My understanding of water is, you use it or you lose it and it will take actual diversion, really, to hold it because we may lay claim to it in recreation. How effective this really will be is hard to say the future. Will they really call it our water because we call it recreational water? But, when we divert water we are using it and we are not apt to lose it, and I recommend retaining both the amendment and the section. Thank you.

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CHAIRMAN GRAYBILL: Mr. Etchart, you may close.

DELEGATE ETCHART: Mr. Chairman, there seems to be so much interest in the amendment, with your approval, could I withdraw my motion with the privilege of, if the amendment fails, to reinsert it?

CHAIRMAN GRAYBILL: You may withdraw it and I certainly will be glad to let you have another chance.

DELEGATE ETCHART: I'll withdraw my motion.

CHAIRMAN GRAYBILL: All right, the motion is withdrawn then and the issue -- Mr. Etchart's motion is withdrawn and the issue then becomes on Mr. Wilson's substitute -- or, Mr. Wilson's amendment. Now, Mr. Wilson's amendment, if you'll take your books and look at page four again, on line eighteen he would change -- the first ten lines or so are the same, eight lines -- and then it says the legislature may, instead of shall, the legislature may determine the method of establishing these future water rights which do not require a diversion and may designate use -- he has added the word, use -- use priorities for these future rights if necessary. And then he adds this sentence: These rights -- pardon me -- those rights which may be established without a diversion or development shall be wholly or in part junior in right to those appropriations for which a diversion is made, regardless of the date of the appropriation.

Mr. Hanson.

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DELEGATE ROD HANSON: I rise in support of Mr. Wilson's motion. I have a number of telegrams and letters from my area, which has several irrigation projects, and they were in favor of deleting section four. However, I feel that Mr. Wilson's motion, or amendment, will take care of the objections that they had in such a way that they would go along with that rather than deleting the entire section. So, I support Mr. Wilson's motion.

CHAIRMAN GRAYBILL: Mr. Davis, you have an amendment. Do you want to make it now?

DELEGATE DAVIS: Yes, sir. I think it would save a double discussion of it. I would move a substitute motion to the following effect --

CHAIRMAN GRAYBILL: Actually, Mr. Davis, as I understand it, you are adding it to Mr. Wilson's amendment?

DELEGATE DAVIS: No, I want to substitute the language in his for this --

CHAIRMAN GRAYBILL: You're substituting your language for his?

DELEGATE DAVIS: Substitute my language for his.

CHAIRMAN GRAYBILL: Very well, then, it's a substitute motion. Go ahead. Do you want me to read it?

DELEGATE DAVIS: Mr. President, in other words, at the end of the last sentence in section four, if necessary, change the period to a comma and put, provided, however, that

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water rights appropriated for recreation, scenic waterways and habitat for wildlife, without diversion, shall be junior and subordinate in right to other beneficial uses regardless of the date of appropriation.

CHAIRMAN GRAYBILL: I take it, Mr. Davis, that your purpose is to limit Mr. Wilson's last paragraph to the three cases of recreation, scenic waterways and wildlife habitat. Is that correct?

DELEGATE DAVIS: It's partially correct, Mr. President, and actually the language he has incorporated in his language, which I agree with the intent and purpose, but he has taken from the telegram saying we should wholly or in part -- they should be junior and wholly or in part junior doesn't really mean much in a Constitution that I can see, and it was a suggestion in the telegram that we're trying to make constitutional language, and I think we should take a position. If we are going to make them junior, they should be junior. If this body doesn't want them junior, then they shouldn't be, but to adopt the language in the telegram really doesn't accomplish, I think, what Mr. Wilson really wants or myself, either one.

CHAIRMAN GRAYBILL: All right, I think I had better read this slowly enough so you may write it down if you want to see it. Mr. Davis would have a substitute motion -- I take it you have no objection to the word, may, and the word, use, so he has the first little changes in line eighteen and twenty,

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may and use. But, the second part of it, the sentence that begins on line twenty-one would be: Provided, however, that water rights appropriated for recreation, scenic waterways and habitat for wildlife without diversion shall be junior and subordinate in right to other beneficial uses regardless of the date of appropriation. Provided, however, that water rights appropriated for recreation, scenic waterways and habitat for wildlife without diversion shall be junior and subordinate in right to other beneficial uses regardless of the date of appropriation. And it has the effect of listing the three types of uses specifically, and it has the effect of doing away with the language, wholly or in part junior. Now, is there discussion?

Mr. Davis.

DELEGATE DAVIS: I'd like, if I could, to put other beneficial uses, after uses, in the state of Montana -- to get that in.

CHAIRMAN GRAYBILL: In the last line?

DELEGATE DAVIS: Yes, sir.

CHAIRMAN GRAYBILL: All right, it says: subordinate in right to other beneficial uses in the state of Montana.

DELEGATE DAVIS: Yes, sir. Could I speak to it briefly?

CHAIRMAN GRAYBILL: Yes, you may.

DELEGATE DAVIS: I go along with Mr. Wilson's idea but where they refer to without diversion or development work,

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it's a little uncertain, so I have provided, or attempted to provide language that if we have recreation or scenic waterways or habitat without a diversion -- in other words, if you're simply appropriating water and letting it flow down the stream and on out the border, then municipalities, industry, agriculture, anyone else, can still make appropriation for use of that water. It is all going to return to the stream. If you have a right with diversion, if we find a habitat for wildlife, for recreation, where you impound for that specific purpose, you would not have a junior right because you would be retaining the water instead of just letting it go out in its natural flow. That's the intent of this language. It's no attempt to really make a change except to be specific for Mr. Wilson's.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman -- and I'm not going to ask Mr. Davis a question because I think that I now understand, but I'll ask him to respond if he likes. It seems to me that we are now putting ourselves in the position where, if somebody says this is a first-class water skiing area and we now appropriate it for that purpose and are water skiing on it and it develops at some future time that somebody might want to drink that water or use it for irrigation or use it for industry, that it once having been diverted and appropriated and used for that water skiing purpose, it takes seniority if we reverse the terminology. It takes seniority over what might

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possibly be, if not a better right, at least a more important right.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: If that's the way this reads, it certainly is not the intention of -- and I would appreciate any assistance I can get to clarify it. In other words, my concern is we must -- if recreation -- if there's a diversion for recreation, it would have a priority. If it's just in the lake or in the river for water skiing and you're not making any impoundment or diversion, then it would be junior to a municipality, say, a city that needs the water, junior to irrigation and junior to other recreational things that were going on. Say you had a recreational thing you wanted to impound and make a lake, but you had it appropriated downstream for recreation, it would still be junior where it was not diverted to where you were going to impound it and save it.

CHAIRMAN GRAYBILL: Now, the Chair senses that there is some sentiment for the section as it was originally submitted by the committee and there is some sentiment for providing a junior status for some rights, and the Chair thinks we ought to get some sense of where we stand on that without perhaps giving up the whole section before we recess. I will certainly let you all speak, but I would like to get a vote on those two issues so we know where we stand before long. Who wants to be next?

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Mr. Brown.

DELEGATE BROWN: Mr. President, this matter is of great concern to me because this water is so important. We are now amending from the words of a telegram and we're taking oral amendments. No one, I think, right now is capable of discussing it. It's a technical field and it must be done right and it's no way to write a Constitution and I think it shows how we are getting into legislative matters. So, I'm going to make an unpopular motion that we pass section four until nine A.M., tomorrow morning, and let the committee work on this.

CHAIRMAN GRAYBILL: A motion has been made to pass section four.

Mr. Kelleher.

DELEGATE KELLEHER: I'd like to amend Mr. Brown's motion to make it until two P.M., tomorrow, and I'd like to speak to my motion, if I may. Is it possible to speak on a motion to --

CHAIRMAN GRAYBILL: Well, --

DELEGATE KELLEHER: I'll be very brief.

CHAIRMAN GRAYBILL: Well, at this point the Chair --

DELEGATE KELLEHER: I'll be brief.

CHAIRMAN GRAYBILL: I don't think you can -- I don't know whether the motion to pass is debatable or not, I suppose it is, but the Chair would like to announce that we intend to finish Natural Resources tonight, and if we don't, we're going

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to work long and I certainly don't want to pass it until two, but you may certainly make your motion. I hope to have another article half discussed by two tomorrow.

DELEGATE KELLEHER: The only question that -- problem that bothers me, Mr. Chairman, is the question that Mr. McNeil has and Mr. McDonough. We have twenty-four lawyers here and nobody can answer this problem about junior rights versus senior rights in the state of North Dakota and downstream users, and I've just called the field solicitor's office in Billings and the field solicitor is out. He'll be back in his office tomorrow morning. The assistant field solicitor's office said -- officer said that frankly he did not have the answer to that question and I am very, very disturbed about that matter. If we make something junior by our Constitution and then certainly North Dakota and Nebraska and all the other downstream users will be able to use it. That's why I'd like to -- I'd like to get an answer to my question, that's all.

CHAIRMAN GRAYBILL: All right. The Chair's point is, we have no idea whether the sense of the body is not to even worry about the junior problem, and if that's the sense of the body, we don't need to wait until two tomorrow to find out the answer to it, but -- so, I'd like some motion -- but, I guess we now have a motion to pass until morning, and did you make a substitute motion to pass until two, is that your point, Mr. Kelleher?

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DELEGATE KELLEHER: (No audible response)

CHAIRMAN GRAYBILL: All right, Mr. Davis, what's your motion? I mean Mr. Brown, excuse me.

DELEGATE BROWN: Since this is not debatable, I will withdraw my motion until you get the sense of the body and then renew it, if that's what you'd prefer.

CHAIRMAN GRAYBILL: I'm not sure that it's not debatable. I think maybe it is debatable.

DELEGATE BROWN: I have no objection to getting the sense of the body and if they are not going to adopt Mr. Wilson's amendment, which I'm strongly for, then it would be a waste of time to pass. But, if we are going to get something in here that's right, then I'll renew it after you get the sense of the body.

CHAIRMAN GRAYBILL: Right. We haven't had any amendments -- haven't had any votes on this subsection four.

Mr. Kelleher.

DELEGATE KELLEHER: If Mr. Wilson's amendment does not pass, then I will withdraw my motion.

CHAIRMAN GRAYBILL: Well, I take it by your phraseology that it's all right to put these motions. The first motion before us is Mr. Davis' motion to substitute his language for Mr. Wilson's language. His language is: Provided, however, that water rights appropriated for recreation, scenic waterways and habitat for wildlife without diversion shall be

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junior and subordinate in right to other beneficial uses in the state of Montana regardless of the date of appropriation.

Mrs. Blend.

DELEGATE BLEND: Mr. Chairman, a point of clarification, in line eighteen of Mr. Wilson's original motion, he changed the word, shall, to may. At one point, if I remember correctly, Mr. Gysler obtained permission from Mr. Wilson to eliminate may and go back to shall, and I notice we've been reading Mr. Wilson's --

CHAIRMAN GRAYBILL: Well, Mr. Gysler did that but he didn't bother to -- I'm not criticizing him but the Chair was not involved in that and if somebody wants to amend it, that's fine.

DELEGATE BLEND: It still is may and not shall, then?

CHAIRMAN GRAYBILL: Well, Mr. Wilson's amendment is may and the language of the committee is shall.

DELEGATE BLEND: Thank you.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I do some water rights law. I think Mr. Berg does and I know Mr. Davis does, and I think that if Mr. Berg and Mr. Davis and I and Mr. Wilson went into the Rules Committee room we could come out of here in fifteen minutes with something that would resolve our problems.

CHAIRMAN GRAYBILL: Very well, I think you could, too. Are you suggesting that you do before we take any votes?

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Mr. Berg.

DELEGATE BERG: If the -- Mr. Chairman, I should like the delegation to at least know my viewpoint on this. I am very much in favor of seeing recreational rights junior to appropriation rights made by diversion and I want to assist in writing a provision into this that will accomplish that purpose. Now, you should understand my viewpoint on this before you send us into any committee.

CHAIRMAN GRAYBILL: Very well, the Chair will suggest that we take a twenty-five minute recess and suggest that anyone interested in this go into the Rules Committee room and help try to write it and maybe we'll come up with something that you can all accept. Mr. -- now, wait a minute.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I move that we recess until three-thirty this day.

CHAIRMAN GRAYBILL: The motion has been made that we recess until three-thirty. Is there -- all in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay.

DELEGATES: (No response)

CHAIRMAN GRAYBILL: Very well.

(Committee in recess from 3:05 to 3:43 P.M. Delegate Felt assumes chairmanship of Committee of the Whole.)

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CHAIRMAN FELT: The Committee will please be in order. Before we proceed with the matters that need to be dealt with, I would like to read the following message from the sergeant-at-arms: At the request of several Delegates, I have learned that there are a few tickets available for Friday and Saturday, March ninth and tenth, for the tournament at Bozeman. If the Delegates would like a ticket, they should see the sergeant-at-arms as soon as possible. He will reserve them at the will-call window in Bozeman. In addition to that matter, I would like to call upon Delegate Scanlin for a brief report.

DELEGATE SCANLIN: Mr. Chairman, in response to the Chair's request for a daily tally, your committee submits this report on yesterday's activity. In one hour of style and drafting, we had a report of the holy trinity, Felt, Schiltz and Habedank. Unanimous acceptance. The report on natural resources, first place goes to Delegate Brown for a twenty minute exegesis of ecological bible. Second prize goes to Delegate Cate for a twenty minute impassionate plea. Consolation prize awarded to Delegate Dahood for twelve minutes of organized confusion. Runners-up included McNeil, twelve minutes; Murray, six; Graybill, six; Garlington, four; Berg, three; Swanberg, two; Schiltz, two; Loendorf and McKeon, one. Arness, Aronow, Brown, Davis, Habedank, Holland, Joyce, Kelleher, goose eggs for the day. A special award to Delegate Campbell for ten minutes of tenacious on and off victory for a clean

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and healthful environment. The committee would take a special privilege in making an honorary degree of M.J.P., which is master of jurisprudence, to Delegate Robinson for rejection of all legal counsel. Signed, Scanlin, Sparks - ad hoc committee Mr. Chairman, I move that this committee be resolved of any further duty. Thank you.

(Laughter)

CHAIRMAN FELT: The question arises on the motion to adopt the committee report. All in favor signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No. The Ayes have it and so ordered.

(Laughter)

CHAIRMAN FELT: The expense warrants for all Delegates are now ready at the auditor's office. So, now we have taken care of our funnybone and our pocketbook and we'll get to work. The motion before the committee is the motion by Mr. Davis, which is a substitute motion. Behind that, there is an amendment by Mr. Wilson to the main motion, which was to adopt subsection four of section three. Any questions about the position we're in at the moment?

Mr. Davis.

DELEGATE DAVIS: I believe, Mr. Chairman, that Mr. Wilson's motion was first and that I now stand on my substi-

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tute motion.

CHAIRMAN FELT: You stand on it?

DELEGATE DAVIS: Yes, I believe that's before us now.

CHAIRMAN FELT: That's correct. That's what I stated. Your motion is a substitute motion which is the motion before us, but that behind it there was the original main motion and the amendment to that by Mr. Wilson. Delegate Burkhardt, for what purpose do you arise?

DELEGATE BURKHARDT: To ask a question, Mr. Chairman. I wonder if we are going to hear a report from the committee that met during the recess?

CHAIRMAN FELT: We shall. Mr. Berg, do you wish to make some statement to inform the Delegates of what went on in the interim?

DELEGATE BERG: I would prefer that either Mr. Schiltz or Mr. Davis make the report. I do have an amendment to propose to either Mr. Schiltz's or Mr. Wilson's motions.

CHAIRMAN FELT: Mr. Schiltz will be asked to, I might say, that with the condition of things as they are -- with the main motion, with an amendment to that motion and a substitute motion. A substitute motion now would not be in order. An amendment to the substitute motion of Mr. Davis would be in order, and if you cannot fit your program into that, then we would have to vote on the substitute motion which is before us in order to make room for a fresh substitute motion.

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And, so, Mr. Schiltz, would you expound?

DELEGATE SCHILTZ: Mr. Chairman, members of the committee, we and ten or twelve other people met around the table back here and I must report we didn't really come up with anything except that each of us now knows the other's position much better and I think we can have a debate that will be enlightening, if nothing else. I had some difficulty with Mr. Davis' explanation of his motion and he has satisfied me now that that's not so. I think that we should proceed on Mr. Davis' motion, either pass it or reject it, then go on to Mr. Wilson's. We are at that point at least and I think that some of the confusion about the various positions is resolved.

CHAIRMAN FELT: Am I correct in believing, then, that there is no new language to present and we are going to work with the same language we had before the recess?

DELEGATE SCHILTZ: That is correct.

CHAIRMAN FELT: Well, before we start, and also for the information of the Delegates, if we go -- get close to five-thirty and it does not appear that we will be able to finish by six, we would then entertain a motion to recess from five-thirty until seven-thirty, so you can make dinner plans accordingly. If it appears that we could finish by six, we will stay here to finish.

Delegate Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, because there was no

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unanimity of agreement in that Rules Committee room, I am going to support the majority report as it was presented.

CHAIRMAN FELT: Delegate Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, as vice chairman of this committee, and having sat in and listened to the diversities of opinions, I am going to also support the majority report as printed in our book, and I want to tell you people that I will be the first one to volunteer to come down here and help in the legislature to get these things to where we all want them, but I still feel that they are legislative, that we can do the best job for the people of the state of Montana by sticking with the majority report, and that's where I'm going to stick.

CHAIRMAN FELT: The gentleman, Mr. Davis, for what purpose do you arise?

DELEGATE DAVIS: Mr. Chairman, I rise for the purpose at this time, before belaboring this thing at length, I understand there's a motion to delete that wants to be tested, so I will withdraw my motion --

CHAIRMAN FELT: Your substitute motion?

DELEGATE DAVIS: -- substitute motion, so that can be floored because we're wasting a lot of time if that passes anyway.

CHAIRMAN FELT: If anyone objects to the withdrawal of a motion that's been presented, it cannot be withdrawn with-

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out permission of the whole -- by vote of the Convention. The delegate, Mr. Berg.

DELEGATE BERG: Mr. Chairman, I have an amendment which I want to propose to either Mr. Davis' or to Mr. Wilson's motions, and I want to know what my position is under this proposed withdrawal.

CHAIRMAN FELT: If he withdraws and a substitute motion is made to delete the entire section, and if that motion to delete carried, you would not have any opportunity to make your amendment --

DELEGATE BERG: Very well, I'll --

CHAIRMAN FELT: -- to the present motion which is pending.

DELEGATE BERG: Very well, then, I'll make the motion at this time. I move that --

CHAIRMAN FELT: The Delegate, Mr. Berg.

DELEGATE BERG: -- the substitute motion of Mr. Davis be --

CHAIRMAN FELT: The Delegate, Mr. Eskildsen.

DELEGATE ESKILDSEN: Just a moment. Have we -- do we have a motion now to delete the whole section?

CHAIRMAN FELT: No, we do not have that motion before us. We have before us a motion by Delegate Davis and we are about to receive an amendment to that substitute motion.

DELEGATE BERG: I move that the substitute motion of

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Mr. Davis be amended by including the words, from a flowing stream, between the words, appropriated and for recreation.

CHAIRMAN FELT: We'll have the Clerk reread -- oh, do you have it in writing, Mr. Berg?

DELEGATE BERG: I do not have it in writing. It's just the three words.

CHAIRMAN FELT: Yes, well, I'm taking over with handwriting that isn't my own -- my own is bad enough --

(Laughter)

CHAIRMAN FELT: But you'll have to read it again, at least for me.

DELEGATE BERG: I'll read it so I think it will make some sense.

CHAIRMAN FELT: Read it the way --

DELEGATE BERG: It would read then -- the substitute motion of Mr. Davis would read, as I have it: Provided, however, that water rights appropriated -- I would therein substitute, from a flowing stream -- for recreation, scenic waterways, habitat for wildlife, and so forth.

CHAIRMAN FELT: You're just inserting some additional language.

DELEGATE BERG: I'm only inserting the words, from a flowing stream.

CHAIRMAN FELT: After the word, appropriated, and before the word, for recreation. Does every Delegate feel that

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they have this before them? The motion is to amend the substitute motion by inserting the words, from a flowing stream, after the word, appropriated. So that the first part of the proposal will read: Provided, however, that water rights appropriated from a flowing stream for recreation, and so forth. Mr. Berg, do you wish to speak on your motion?

DELEGATE BERG: Mr. Chairman, I do. This amendment which I have proposed, I would propose to either Mr. Wilson's or Mr. Davis' motions. Basically, I am in agreement with the necessity of one or the other of their motions because I am, shall I say, married to the idea that agricultural uses by diversion must under all circumstances have a superior right to recreational or wildlife purposes or, I think it says, scenic waterway purposes. However, there are really two ways of appropriating water. Generally, when we are speaking of appropriation, and all of our appropriation law is written primarily with a conception that water will be diverted from a flowing stream, but there is another way of appropriating water and that, of course, is by impounding a dam at the head of a stream. Now, back in 1957, when I was in the legislature, I was successful in amending the water right laws to give the right to impound water on an adjudicated stream and I want to read to you what that amendment says so you'll understand the sense of my proposed amendment. That amendment says: Provided, however -- provided that water stored in a reservoir

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pursuant to an appropriation hereunder, which is subsequent to an adjudication of water in a flowing stream, when so released from storage shall not be considered as a part of the natural flow of said adjudicated stream. Now, that has had this effect, at least up to this time, there have been several dams built over in my area of the country at the head of a stream and it has raised the waters, sometimes on a lake but more often just at the head of a ravine where the stream flows through, it impounds the water during the winter time. It reserves it for irrigation later in the summer. Always, in any adjudication that I have had anything to do with, the court requires that the natural flow, as it comes into that reservoir and leaves it, must at all times be preserved for the water users who have rights, priority rights, in the natural flow of the stream. Now, but the water that is impounded over and above this natural flow -- generally the natural flow is that which is spilling over at the end of the season, so it's not difficult to determine it in quantity -- that water which spills over, or that natural flow is always reserved to the downstream prior users. Now, the water that is impounded, however, the man who impounds it, the man who spent the money to build and create this reservoir, is said that his -- that that water to the extent that it is impounded is not a part of the natural flow of that stream, it's not subject to the prior adjudication because it is so-called developed water and belongs to him exclusively so long

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as he maintains a natural flow of that stream. Now, this has always been -- this has been recognized and used repeatedly in Gallatin and Park counties at least. Now, it was based primarily for agricultural uses. We are now talking about a new and different kind of use of water. We are talking about, primarily, recreational use and I would have you understand that I am the first to stand up and say that agricultural and industrial uses ought always to take priority to recreational use, but I see this in the future, and that is this -- that in the future the fish and game is going to eventually be building dams also at the headwaters of these streams, and they're going to impound water and they're going to preserve the natural flow of that water through the dam they build, just as we have done in agricultural purposes. But, they are going to impound it for a different purpose, and I think a very worthy purpose. They're going to impound it for that situation so that later in the -- in the late time of the year they can let that water flow down and maintain the flow of that stream to maintain the fish habitat in it. Now, this is the question. Let me tell you about the streams that I've had something to do with on adjudication in Park county. For example, Mill creek and Pine creek -- these are two small streams. Mill creek is not so small. It really has quite a head of water. They both flow into the Yellowstone river, but both of those streams, especially during the second cutting of hay, are dry

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as a bone where the bridge comes across the highway. Much of the accessible fishing area on those two streams are below the highway. There's a good stretch of what once, I suppose, was good fishing stream. It's no longer there. There's no fish life, really, from the last diversion on down to the mouth of the Yellowstone. If the fish and game eventually builds a dam at the head of Mill creek and allows this water to come down, this water would not be available for agricultural uses. It would be, under my amendment, a right of them to turn that down and allow, if you please, fish life, and it's water that would not otherwise be available for agricultural, for any other use, because it's newly developed water created by the impoundment of a dam. My amendment, I think, does this. I think it preserves the right of the fish and game to do that, but diversion -- in other words, they cannot do that, they can't have a diversion means from a flowing stream, but they can impound at the head of a stream. I think this -- I wanted to explain this to you. I want this amendment -- I propose this amendment to either Mr. Davis' or Mr. Wilson's motion. That's my argument.

CHAIRMAN FELT: The gentleman, Mr. Schiltz.

DELEGATE SCHILTZ: I would, for my own purposes if not for everybody else's, I would like to put this thing in perspective. What we are after here is to try to keep the water, the Montana water, from ever becoming North Dakota water or South Dakota water or Nebraska water, and in so doing, we are

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making it possible to appropriate water for other uses than what it has been traditionally appropriated for, and we're making it possible for people to appropriate it without diverting it. Now, the traditional way to appropriate water is to take it out of a stream and put it to a beneficial use, and that's what farmers and ranchers in the state of Montana have been doing for many years. Now, in so doing, we are fooling around with the internal system, that is to say, just the Montana system of water rights. We're running the risk of allowing some other type of appropriation without use as having some priority over the traditional uses of water. Now, the worry -- my worry and the worry of Archie Wilson and I'm sure the worry of Carl Davis is that, if we leave this to the legislature, as the committee report does, we don't trust the legislature to keep those sacred priorities, especially by not using the water. All they have to do is go to the courthouse, or wherever the board is that does this, and say, I appropriate so many acres of water for water skiing or for looking at, or for swimming in, and what Archie wants and what Carl wants and what I want is that we maintain that -- at some future time the priority exists for more essential uses of that water, and it's just purely a matter of not trusting the legislature. I'll go with Mr. Davis' motion, I'll go with Mr. Wilson's motion. Mr. Berg's motion poses a problem so far as I'm concerned when he talks about flowing streams because he's thinking mostly in that

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case of -- that all water is flowing water and eventually gets to North Dakota. The fact is, there's lots of casual water in Montana and farmers use it at one time or another -- and farmers and ranchers can correct me if I'm wrong, isn't there, Charley? Now, as I see it, if you limit this to flowing streams and you do have a considerable amount of casual water that gets trapped in a coulee somewhere, somebody can go say, I want to water ski on that and, under Mr. Berg's plan, that particular priority is excluded. Under Mr. Berg's plan of limiting this to flowing water, if a water skier appropriates it without using it, he comes in ahead of that farmer, and that's my problem with Mr. Berg's amendment and I resist the amendment for that reason.

CHAIRMAN FELT: For the -- I think -- I felt that it was appropriate, considering the fact that there was the recess, that there be a general resume of that nature and I think it was well done, but from here on, I'm going to insist that comments be directed specifically to the amendment of Delegate Berg and we will not wander into the entire subject. The Delegate, Mr. Davis.

DELEGATE DAVIS: Mr. Chairman. Mr. Berg, would you accede to a question, please?

DELEGATE BERG: Yes.

DELEGATE DAVIS: Mr. Berg, if we discuss your amendment and my amendment and Mr. Wilson's amendment, and then it

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should be the will of the body, on a motion that Mr. Etchart has, to strike this whole thing, wouldn't it be better, in your opinion, to get this back to vote on whether they want to delete section four first? If section four is not deleted, then I'd like to reinstate and go on an amendment process, or not.

DELEGATE BERG: In the first place, I, like Mr. Schiltz, want to try as much as I can through constitutional enactment, to save water for Montana. Now, --

CHAIRMAN FELT: No, I was putting the gavel down a little firmly, perhaps, but I would prefer if you could give a brief answer --

DELEGATE BERG: I am.

CHAIRMAN FELT: -- as to whether or not you think it would work to withdraw your amendment and his motion, temporarily at least, to see what happens with this other approach.

DELEGATE BERG: Well, my whole idea is, I want to see in this Constitution considerable talk about water because I want to be sure that we are preserving water to Montana. I believe we can do it, even without these amendments. The amendments are designed to safeguard the priority, as I understand it, for agricultural use. Now, this is the way I look at it. I feel this way, that if --

CHAIRMAN FELT: I believe he wants a vote on the motion, so let's get to it. Mr. McNeil, for what purpose do you arise? To discuss the motion?

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DELEGATE McNEIL: Yes.

CHAIRMAN FELT: Proceed.

DELEGATE McNEIL: Mr. Chairman, all of the reports coming out of that committee room revolved around the three amendments and none have voiced the opinion of the majority report. Concerning specifically Mr. Berg's amendment as applied to Mr. Davis' or to Mr. Wilson's, this would foreclose the possibility of recreation having a water right where recreation provides the funds, acquires the right and would foreclose them from keeping it in a stream, a natural stream. An example I would like to give you is the Bitterroot river where the fish and game department spent one hundred thousand dollars, not of tax money but funds that came from license fees -- the western Montana fish and wildlife association put five thousand dollars into this -- and built an impoundment. They gathered up water, flood water that would have otherwise been lost. In the middle of the summer, at the height of the irrigating season, the Bitterroot river is drained dry by the irrigators, so at that point in time the irrigators would have used up everything they would have had. Now, the fish and game, when the tried to put some water out of the dam that they built with their own money so that the fish could live during the summer, the water is immediately appropriated and put into the fields by the irrigators. Mr. Berg's amendment, Mr. Davis' amendment, and the amendment of Mr. Wilson would still foreclose that possibility.

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It also would foreclose the possibility of the fish and game buying a water right. Water rights can be bought and sold just like land can. If an irrigator who has been using his water for years for irrigation decides to stop irrigating and sell it to the fish and game, they could not put it into the natural stream without it then being immediately taken back out by an irrigator. In addition, the concern of Mr. Berg, Mr. Davis and Mr. Wilson is well founded but it is overlooking the fact that in all the areas of our state, in the Gallatin and in the Beaverhead where there is substantial irrigating, all of those waters are well over-appropriated. There are far more appropriations filed than there is actually water there. This section applies only to waters which are not presently appropriated. Section one preserves all of the very sacred rights that they are concerned about, so this applies only to those waters and that, by the very nature of it, means the Missouri, the Yellowstone, or large bodies of water as they are departing the state and which do not have any appropriations on them. In addition, the majority report dictates that the legislature must establish a method for the acquiring of water rights without a diversion and may establish a priority. The problems that we had in that committee room and that we are having right now speak exactly to what Professor Stone recommended -- don't put priorities in the Constitution. For that reason, I would recommend that we defeat the amendment of Mr. Berg's, defeat

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the amendment of Mr. Davis, defeat the amendment of Mr. Wilson and then let's meet the test of the majority report as drafted either on Delegate Etchart's motion to delete or on an affirmative motion to pass it as drafted.

CHAIRMAN FELT: Does the Delegate, Mr. Berg, wish to close on his motion to amend the substitute motion?

DELEGATE BERG: Please. I'll try to be brief. I think I should have said in the amendment, and I'll propose it, water naturally flowing in the stream. You've got to distinguish, as almost all water law does, contrary to what Mr. McNeil says, that water appropriation comes from water naturally flowing in a stream. Impounded water, water that is contained in a reservoir, in a dam -- that's what I'm talking about -- is not considered to be a part of the natural flow of a stream. So that what Mr. McNeil is saying, if it occured in the Bitterroot, it occurred because no one took the trouble to make that distinction because if the fish and game had impounded waters that were not a part of the natural flow of that stream, they could have released that and they could have prevented it and the court decree would have prevented them, anyone, from diverting it because it's developed water. It's not part of the natural flow of the stream. It was never available to those ranchers when the water was adjudicated. At any rate, my purpose here is to preserve the impounded water not only for this possible fish and game use, but primarily to preserve it for agricultural

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uses, and I think it's a very valid distinction that I would like you to consider.

CHAIRMAN FELT: The Delegate, Mr. Romney.

DELEGATE ROMNEY: In view of the fact that the Bitterroot situation has been brought up, there is a little bit of a difference of opinion between fact and --

CHAIRMAN FELT: Delegate Romney, I am not going to rule you out of order, even though you are out of order to be speaking after Mr. Berg has closed, as long as you'll make it brief.

DELEGATE ROMNEY: (No audible response)

CHAIRMAN FELT: All right. We are now ready to vote on the motion of Mr. Berg to amend the substitute motion of Mr. Davis. The motion of Mr. Berg's inserts the words, from a flowing stream --

DELEGATE BERG: (Inaudible. Microphone turned off.) -- from water naturally flowing.

CHAIRMAN FELT: Will you state the words as you wish them?

DELEGATE BERG: From the natural flowing stream.

CHAIRMAN FELT: From the natural flowing stream.

DELEGATE BERG: Yes.

CHAIRMAN FELT: Those are the words to be inserted. We will accept the revised version of the motion. The Delegate, Mr. Wilson, for what purpose do you arise?

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DELEGATE WILSON: To call for a roll call vote, Mr. Chairman.

CHAIRMAN FELT: Roll call is called for and sufficient seconds. The Delegate, Mrs. Eck, did you have that same thing in mind?

DELEGATE ECK: Yes, Mr. Chairman.

CHAIRMAN FELT: The question now arises, then, on the motion of Delegate Berg. All in favor will signify by voting Aye on the voting machine. Those opposed will vote No. Has every Delegate voted?

(No response)

CHAIRMAN FELT: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN FELT: If not, the Clerk will tally the vote.

Aasheim	-	Aye	Bates	-	Aye
Anderson, J.	-	Aye	Belcher	-	Aye
Anderson, O.	-	Absent	Berg	-	Aye
Arbanas	-	Nay	Berthelson	-	Aye
Arness	-	Absent	Blaylock	-	Nay
Aronow	-	Nay	Blend	-	Nay
Artz	-	Nay	Bowman	-	Absent
Ask	-	Aye	Brazier	-	Aye
Babcock	-	Nay	Brown	-	Absent
Barnard	-	Aye	Bugbee	-	Nay

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1	Burkhardt	-	Nay	Harbaugh	-	Aye
2	Cain	-	Nay	Harlow	-	Nay
3	Campbell	-	Excused	Harper	-	Aye
4	Cate	-	Aye	Harrington	-	Aye
5	Champoux	-	Nay	Heliker	-	Aye
6	Choate	-	Aye	Holland	-	Nay
7	Conover	-	Nay	Jacobsen	-	Nay
8	Cross	-	Absent	James	-	Nay
9	Dahood	-	Aye	Johnson	-	Aye
10	Davis	-	Aye	Joyce	-	Aye
11	Delaney	-	Aye	Kamhoot	-	Aye
12	Driscoll	-	Aye	Kelleher	-	Aye
13	Drum	-	Aye	Leuthold	-	Aye
14	Eck	-	Aye	Loendorf	-	Nay
15	Erdmann	-	Aye	Lorello	-	Absent
16	Eskildsen	-	Absent	Mahoney	-	Nay
17	Etchart	-	Aye	Mansfield	-	Nay
18	Foster	-	Nay	Martin	-	Aye
19	Furlong	-	Aye	McCarvel	-	Nay
20	Garlington	-	Aye	McDonough	-	Absent
21	Graybill	-	Absent	McKeon	-	Nay
22	Gysler	-	Nay	McNeil	-	Nay
23	Habedank	-	Aye	Melvin	-	Aye
24	Hanson, R. S.	-	Nay	Monroe	-	Nay
25	Hanson, R.	-	Aye	Murray	-	Nay

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Noble	-	Nay	Skari	-	Nay
Nutting	-	Aye	Sparks	-	Nay
Payne	-	Excused	Speer	-	Nay
Pemberton	-	Aye	Studer	-	Nay
Rebal	-	Nay	Sullivan	-	Nay
Reichert	-	Nay	Swanberg	-	Nay
Robinson	-	Nay	Toole	-	Aye
Roeder	-	Nay	Van Buskirk	-	Absent
Rollins	-	Nay	Vermillion	-	Nay
Romney	-	Nay	Wagner	-	Nay
Rygg	-	Nay	Ward	-	Nay
Scanlin	-	Nay	Warden	-	Nay
Schiltz	-	Nay	Wilson	-	Nay
Siderius	-	Nay	Woodmansey	-	Nay
Simon	-	Nay	Chairman Felt	-	Nay

CLERK HANSON: Mr. Chairman, thirty-seven Delegates voting Aye, fifty-one voting No.

CHAIRMAN FELT: The question before us now is the motion of Delegate Davis, unless he wishes to try again to withdraw it.

The gentleman, Mr. Arbanas.

DELEGATE ARBANAS: I would like to say a few words in support of the majority report. Back a few hours ago when we started the amendments, beginning with Mr. Wilson's amendment, the many people were saying, well, that's what we have

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to do to compromise. Let's accept it and go on with that. I submit that to set up a sacred right, as Mr. Schiltz talked about, of priorities forever is about the most difficult thing we could possibly set about -- that, as Mr. Berg alluded to several times that he is married to the idea that agriculture will always come first. If there are some considerations, why, at some time in the future this may not be true and, why, we'd better be pretty careful about it. First of all, I sense that the time may come in Montana when recreation may be our big industry and if we have locked ourselves into something else it may be bad news. Also, I kind of resent the idea that agriculture would come first. In a sense it seems to me that we're saying in so many words that money making will always be ahead of people use, and I submit that that may not always be true, that people use of water may be much different or much larger than always that thing that makes money. The last reason, which is the most compelling in my mind, why I would speak against both amendments is the fact in subsection two we spoke of the public use. We passed that, and I would like to submit that very often industry or agriculture may be private use. Recreation may be the public use that should take priority. Well, anyway, to say one is junior to the other, I think would be a big mistake. To say that forever agriculture or industry will come ahead of -- seems to me to be something I don't want in the Constitution.

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CHAIRMAN FELT: The Delegate, Mr. Wilson.

DELEGATE WILSON: Would Delegate Arbanas yield to a question?

CHAIRMAN FELT: Do you yield?

DELEGATE ARBANAS: Certainly, Mr. Wilson.

DELEGATE WILSON: Would you not agree that perhaps municipal use for water to drink is a beneficial use and should be above recreational use?

DELEGATE ARBANAS: In most cases that I can imagine. I would wonder if that is true every place always, however.

DELEGATE WILSON: Would Mr. Arbanas yield to another question?

CHAIRMAN FELT: Do you yield?

DELEGATE ARBANAS: Certainly.

DELEGATE WILSON: We spell out in section four the beneficial uses, and it says, domestic, municipal, agricultural, stock watering, recreation, and so forth. My question to you is that I have seen dry years in certain areas of the state of Montana that drinking water did become a problem for municipalities, and I think they certainly should have a priority. Would you not agree?

DELEGATE ARBANAS: I think what my answer might be, Mr. Wilson, that's why I wouldn't want it in the Constitution because situations do change. The very kind of situation you are bringing up, we'd say, I wouldn't want to say that one

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right forever had priority.

DELEGATE WILSON: Thank you, Mr. Arbanas.

Mr. President.

CHAIRMAN FELT: Mr. Wilson.

DELEGATE WILSON: I think what we are talking about here is beneficial uses and their priorities, and this is the thought that the Delegates should keep in mind. And we are speaking about municipalities. We are speaking about several different uses of these waters, and all we're trying to do here is try to establish priorities to those rights, and I think that as we vote on these issues, this is the thing that we must remember -- establish which has the junior and senior rights. Thank you, Mr. President.

CHAIRMAN FELT: The Delegate, Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I believe that what we are really saying here is that in the state of Montana, if we accept this, recreation can never be really a beneficial use. It's a beneficial use only for us to use for water that is flowing out of Montana, but so far as water within the state, we've ruled it out as a use that has any priority whatsoever. We are really ruling out our blue ribbon trout streams that were established a few years ago. We are ruling out the possibility of ever establishing a minimum flow in our streams. In other words, we're saying that industry, agriculture and every other use comes first and that just having water in a

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stream, even a minimum flow of it, is not of any worth to us and never, never shall be. I think that we would be far better off to delete this whole section than to retain the section with a junior standing for these uses.

CHAIRMAN FELT: The Delegate, Mrs. Bates.

DELEGATE BATES: Mr. Chairman, fellow Delegates, I wish to clarify something here, that in Gallatin county all the water now is appropriated or adjudicated. If the farmers wanted to use the water which is rightfully theirs, they could dry up the river right now. They have a general agreement for the past several years that they reduce the number of inches that they are allowed or permitted to have that is theirs, and they do leave water in the river. This would not make any difference because the adjudicated right, we've already passed on this, is a prior right and it will stay there. What we are discussing here is stream flow that has not been diverted, that diversion would get a prior right and this means it would be our water to use. If we let it go downstream, which we will by leaving it just in recreation alone, then Dakota will take the right to that. Later, we may never be able to use it in any form because we are giving them the real right because of their use and our ability not to do so. Thank you.

CHAIRMAN FELT: The Delegate, Mr. McDonough.

DELEGATE McDONOUGH: Mr. President, I don't think we really know what we're doing here and all the ramifications of

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it, and I really feel we should vote against Mr. Davis' motion so that a substitute motion can come up to delete all of section four and let the legislature handle it.

CHAIRMAN FELT: Does Mr. Davis wish to close?

DELEGATE DAVIS: I'll withdraw my motion if the Delegates will be kind enough to permit this other motion to come in and test it that way. I'll withdraw my motion.

CHAIRMAN FELT: Without objection -- Mr. McDonough, for what purpose do you rise?

DELEGATE McDONOUGH: I wasn't going to object. I was going to make a motion to delete.

CHAIRMAN FELT: Without objection, the motion of Mr. Davis will be withdrawn.

The gentleman, Mr. McDonough.

DELEGATE McDONOUGH: As a substitute motion, Mr. President, I would like to move that the Convention delete subsection four of section three of this report.

CHAIRMAN FELT: Do you request a roll call?

DELEGATE McDONOUGH: Yes.

CHAIRMAN FELT: A roll call has been requested.

The gentleman, Mr. Davis.

DELEGATE DAVIS: May we speak to this motion to delete?

CHAIRMAN FELT: Yes, it's a debatable motion.

DELEGATE DAVIS: Mr. Chairman, I support Mr. McDon-

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ough's motion to delete section four. Section three provides that all of the appropriations are going to be made subject to appropriation for beneficial use as provided for law. Then, section four tries to get in this recreation as a beneficial use without anyone understanding, really, what we're trying to do, as was shown by Mrs. Eck, when she thinks that we can provide a minimum stream flow somehow in July with the water that's already gone out of the state in the high water time of May. Everyone met in here and we don't reach an agreement among everyone in here as to what the language is that we're trying to put in. Section four is clearly the most statutory article that we have tried to write in the Constitution and Mr. McNeil concedes that, and the argument that the majority uses on this is completely inconsistent with the argument they used yesterday on the first article to stick with -- stick with the article, stick with the committee and let's leave this up to the legislature. O.K., we've got a completely different argument today on this because they want to put in a non-diversion flow. I respect and appreciate recreation as a beneficial use, but there's no way in the world, if you don't impound it, it just does down the creek and out your borders. If this doesn't pass, then, of course, Mr. Wilson's motion was made. My motion was intended, if we were going to have such a motion, I thought we should have more than just the language, partial language out of a telegram from Mr. Aldrich in our Constitution, so we

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slowed it up enough to get a little thought, so regardless of which way it goes, but this is statutory. Calling your attention to the 1899 Constitution, they had a lot of speakers came and testified and they all talked about Montana and water, what we could do with water and they traced the history of irrigation throughout the world, in all the countries. It all depended on irrigation and water. This attempt to get this in for recreation, scenic waterways and wildlife really sounds good to the people back home, but you're not doing a thing for them. If you leave it up to the legislature, they have to implement it. Let them sit down and work it out and implement it the way it should be. When you get all the lawyers here and the laymen here admittedly don't know how you're going to make that section work, but we still want to write it in the Constitution, and ladies and gentlemen, I think we've got to go back to the concept we came with. Let's try to write a Constitution. We've got the purpose and we've got everything in the first three sections until someone wants to inject their personal idea in the Constitution. I'm prone to that and we all are. This is exactly what's happened here. I talked with this Mr. McNeil on this and I kind of agreed with him at times but it seems to me now it's one of these things, we should delete section four as completely statutory.

CHAIRMAN FELT: The Delegate, Mr. Arbanas.

DELEGATE ARBANAS: I wonder if Delegate McNeil would

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yield to a question?

CHAIRMAN FELT: Does Delegate McNeil yield to a question?

DELEGATE McNEIL: I yield.

DELEGATE ARBANAS: I understand that the first purpose of this subsection was to keep Montana's waters guarded against use downstream. Will this be lost if we delete this thing?

DELEGATE McNEIL: Yes.

CHAIRMAN FELT: The Delegate, Mr. Loendorf.

DELEGATE LOENDORF: Yes, Mr. Felt. I'll ask Mr. Berg to yield to a question, please.

CHAIRMAN FELT: Does Mr. Berg yield?

DELEGATE BERG: I yield.

DELEGATE LOENDORF: Mr. Berg, I'm not up to date on water law like you are. I'd like to pose this question to you. I think the last answer Mr. McNeil gave is inaccurate but I'm not sure, but it seems to me no matter what we put in our Constitution or what we put in our statutory law, that when a dispute results between two states over water, the case will be tried in federal court and the federal government will then make a determination and divide up the water between the two states as the needs exist within those states. Is that not correct?

DELEGATE BERG: I think you are correct and I do not agree with Mr. McNeil that by -- I believe that Mr. Loendorf

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is correct, that this is the way the problem will eventually arise. And I believe that we ought to include at least as many uses of these waters and recognize them in the Constitution because it gives us that much better status in relation to other states..

CHAIRMAN FELT: The gentleman, Mr. Swanberg.

DELEGATE SWANBERG: Mr. President, I'm standing up again with another law book in my hand, and I'm afraid I'll get shot down here by Mrs. Robinson, but nevertheless, I'll continue. I'd like to refer the body's attention to section 89-801 and this has to do with the appropriation of water by the fish and game commission, and it says here: the unappropriated waters of the streams and portions of streams hereafter named shall be subject to appropriation by the fish and game commission of the state of Montana in such amounts only as may be necessary to maintain stream flow as necessary for the preservation of the fish and wildlife habitat. Such uses shall have priority of right over other uses until the district court in which lies the major portion of such stream or streams shall determine that such waters are needed for a use determined by said court to be more beneficial to the public. Now, it seems that one of the main purposes -- one of the main arguments of debate for the last hour or so has been to establish in the Constitution that appropriation of water for recreational purposes is a beneficial use, and it would seem to

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me that the legislature has already anticipated this in that respect by this section and, I expect, other sections. They have already declared that water may be appropriated out of our streams for a beneficial use which is fishing. I think, with other observers here, that we are actually trying to legislate in here. I think that subsection three is about all we need and I'd like to ask Mr. Etchart, if he would, to read what the North Dakota constitution has in it about water rights.

CHAIRMAN FELT: The gentleman Delegate, Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, this is all there is to it in North Dakota. All surface and subsurface water shall forever remain the property of the people and subject to appropriation for beneficial uses as provided by law. That's it.

CHAIRMAN FELT: The gentleman, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I want to say to Mr. McNeil and the other members of the committee that I am in complete sympathy with the purpose of subsection four, and I have no problem with subsection four. It took me a little while to understand it, I have to say, because getting -- acquiring water as subsection four says is complete anathema that twenty-five years of law practice when I'm working with water. But, I want -- earlier today I talked with Mr. McNeil to see if he could live with Mr. Wilson's proposed amendment and at that time he told me he could, and I would like to have this section

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four and I'd like to have it with that amendment. Thank you.

CHAIRMAN FELT: The gentleman, Mr. Ask.

DELEGATE ASK: Mr. Chairman, I rise in support of the motion to delete. I think all -- most of us can see the problems we are creating here by putting this section in, and I would like to say that I don't agree that if we don't have section four that we are going to lose our water to North or South Dakota. I submit that within ten months there's going to be a legislature meeting here and they can set up the uses and appropriate all the water, and we don't have to do it in the Constitution. If you don't think they're going to do it, you go home and get some candidates to run that are going to put this into the Constitution -- or in the statutes -- when they meet here next year. And, I'm scared to death what we're doing here. We're just involving in more and more problems that we could have the worst fiasco you ever saw with this section in here. I think the legislature is going to do it. I think they know water is important and I submit that this should be deleted and leave it up to them. Thank you.

CHAIRMAN FELT: The gentleman, Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman.

CHAIRMAN FELT: Be sure you put your name on the list.

(Laughter)

DELEGATE SCANLIN: Thank you, Mr. Chairman. If I'm going to go downstream or down the drain, I'm going all the way.

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I rise in support of the majority report and resist the motion to delete.

CHAIRMAN FELT: The gentleman, Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I want to talk a little bit about this Bitterroot proposition which was brought up. It is true, as Delegate McNeil said, that Painted Rocks lake was constructed. It was constructed, however, as a WPA project. After the government owned it for a while, the state of Montana water conservation board acquired it from the federal government which wanted to get shed of it. As years passed, sportsmen of the Bitterroot and Missoula areas decided they wanted to get more water into the Bitterroot river which would keep the rocks at the bottom of the river wet during the dry summer season. They raised a fund between the fish and game department, the western Montana fish and game association, and the Ravalli county fish and wildlife association, and they bought five thousand acre feet of the water from the Painted Rocks lake which holds when impoundment is complete approximately thirty-three thousand acre feet. When the summer time comes and the flood water is gone in the Bitterroot river, the water -- the normal flow of the stream, as described by Delegate Berg, runs down the river and is captured in the irrigation ditches of the various farmers and irrigation districts which own -- which possess the prior rights. At one time my family owned a ranch, which I disposed of some years ago, of approximately

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a thousand acres. We had a third irrigation right and in that district of Canyon Creek, there were twenty-three or twenty-four appropriations. We had third right. In July there was no more water for us, only the water was for the first and second rights. The same thing is true throughout the entire valley. In the summertime, when the flood waters have disappeared, the river between Victor Crossing -- or between Tucker and Victor Crossing is so destitute of water that you could walk across the rocks of the east side channel of the river, the big channel, without getting your socks wet in oxfords. The same thing is true in many other portions of a lot of the creeks, as described by Delegate Berg, in Park county. A lot of our creeks become absolutely dry. The water is captured and put into irrigation, as it should be. However, the five thousand acre feet which was purchased by the state fish and game commission and the two sportsmen's organizations, when it is released it does keep the aquatic insects and the plant life below the water level, keeps it moist enough in the west fork of the river below the Painted Rocks dam until it reaches its junction with the east fork of the river. And then, after that, the water that was purchased and was supposed to keep the river moist from the lake down to where it joins the river, the Clarks Fork at Missoula, it suddenly disappears. Farmers gather it up in their ditches all along the route until there is none. And, this is not a fancy at all. It's a fact and anyone who lives

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in the Bitterroot or anyone who goes up there in July and August can see it for themselves. One of the worst examples of it is the state water board itself, which owns the former Daly ditches which were unloaded on the state of Montana for one dollar when they got too costly to maintain, and then the state put several hundred thousand dollars in them to make them operative and we now have good ditches and they use more water than they are allowed under their appropriation, and so does almost every other farmer. So, if you're going to maintain the water for wildlife, including fish, you are going to have to have somebody riding herd. Well, we have water commissioners. We have had water commissioners in Ravalli county twice in the history of the county on the river. We have them all the time, every summer, on the creeks but on the river we have just had them twice in all the history of Ravalli county and Ravalli county was one of the first to be settled in the state of Montana. Now, if the state of Montana, through its fish and game commission, is going to acquire -- spend a lot of tax -- license payers' money and federal money that they get in order to impound water and turn it loose, why, there's no reason for us to suspect that we will have any other results than we've had on the Bitterroot river. I think that this is a pretty good example of the need for this impoundment and I think the only way we are going to get it is through having recreation a beneficial use. Now, we are waiting for the legislature to do it.

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Two members of this assembly sat for almost two years on a committee which was set up just for the purpose of trying to write a new water law for Montana, and when we got through with those two years, we had such voluminous text that none of us would sign the bill. And, I don't think you're apt to get anything like this out of the legislature very quickly. But, it's worth trying. I do not think we should sacrifice section -- subsection four and I'm for the majority report.

CHAIRMAN FELT: The question before us is the motion of Delegate McDonough to delete this in its entirety.

The gentleman, Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I resist the motion to delete. In conversations I have had with people, it seems like we really haven't had any problem with this section we are talking about until the bureau of reclamation got into it, and as far as I'm concerned, the bureau of reclamation would probably just a lot sooner have this grandois plan go through than to have the people of the state of Montana keep the water. I talked a couple of weeks ago to one of Mr. Blaylock's constituents that is in both of the ditch companies in the Billings area. We thoroughly went over the article with he and five others. I received a phone call from this gentleman yesterday afternoon and he said he was against this, and I said, well, now, just a minute. This is the same thing that when we sat down and discussed, you said, well, this we need to keep water

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for the future of Montana. The only thing that we did is we took -- found when the explanation of it was being written that we had to take part of what was in section six and put it in section four for clarity. I said, who has been talking to you? What's causing the trouble? And, as near as I can find out, it was the bureau of reclamation that was causing the trouble. Now, I submit to you that we are the people of the state of Montana and we are the people that should be writing the Constitution for the state of Montana and not the bureau of reclamation, and I believe that the only quick way and sure way that you are going to have to protect all of the water that we need to protect is to pass section four and I believe that once this is passed, the legislature will provide the priority in law as they should, and then we will be sure that we are doing a job for the future generations of this state. As I say, I resist the motion to delete.

CHAIRMAN FELT: The gentleman, Delegate Mr. Holland.

DELEGATE HOLLAND: Yes. Mr. McNeil, would you yield for a question?

DELEGATE McNEIL: I yield.

DELEGATE HOLLAND: Mr. McNeil, to give you my background, I'm a lawyer that had never had a water rights case. We just don't have problems like that in Silver Bow, I guess. At any rate, all I ever knew about water was that it didn't flow uphill. That is, up to now. I'm not sure about what I

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understand --

(Laughter)

DELEGATE HOLLAND: But, I've been sitting here for three hours listening to this debate and trying to find out how anything the two Dakota states are going to do to our water that are going to interfere with recreation. Now, what can they do in North Dakota or South Dakota that is going to keep us from fishing or water skiing or using these streams? I just -- they can't touch this water until it comes within their borders, and I just don't know what they can do.

DELEGATE McNEIL: They can dig a great big ditch and funnel it out of here in the middle of the summer and this is in the thinking of many of the master planners at the national level.

DELEGATE HOLLAND: You mean it's within the power of North Dakota to come into the state of Montana and dig a big ditch?

DELEGATE McNEIL: Mr. Holland, I'm not nearly as concerned about North Dakota as I am Texas and California.

DELEGATE HOLLAND: Well, I --

CHAIRMAN FELT: Does the Delegate, Mr. Hanson, wish to speak on the motion?

Delegate Mr. Hanson.

DELEGATE ROD HANSON: Yes, Mr. President, I just wanted to say that the letters and telegrams I have gotten from

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my people in my area who are irrigation people didn't come from the bureau of reclamation, Mr. Gysler. I can assure you this. And, as far as I know, Mr. Aldrich has not been in my area in the last two, three weeks.

CHAIRMAN FELT: The question before --

The Delegate, Mr. Drum.

DELEGATE DRUM: Mr. Chairman, if I can get Mr. Holland's attention, I'm going to invite him on a trip to North Dakota, too, it looks like. The method of establishing a water right, Mr. Holland, is to use it as -- on an irrigated project, say. If the people in North Dakota set up an irrigation project and they are using a certain amount of water, then they establish a right to that water. Now, those people in Montana who, ten, fifteen or twenty years from now, say, I think I'll establish an irrigation project here, they establish a project but a person from North Dakota can come back upstream and he can turn the water off of the people who last filed water rights on that stream. He can go to a court of law and turn them off. My two days in law school have not prepared me for an argument with you, but those are the facts, Mr. Holland.

CHAIRMAN FELT: The gentleman, Mr. Holland, may speak.

DELEGATE HOLLAND: I wasn't quite as dense as I pretended to be. What I'm saying -- they're talking about recreation use, and I fail to see what use -- what North Dakota does with the water after it leaves the state of Montana could

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ever affect a recreation use in Montana. And, all of this stuff about diversion, I don't care about it -- I don't care about it unless they're going to take Montana water out of Montana. Now, there has been a lot of talk about taking Columbia water down to southern California. I was against it. I said, why should they use our water. When I looked into the practicalities of it, they don't want to take the water in Montana down to California. They don't want to take the water in Idaho down to California. They want to take the water in Oregon down to California. They want to go to the mouth of the Columbia, and that's when it has run its entire course and it's going out into the ocean and they want to take it at that point and take it to California. And, I just don't see where we have any big worry about taking water from the mouth of the Columbia river and taking it down to California. I just can't see where anybody in Montana is going to be hurt by that. But, I further can't see -- I don't know what Mr. Davis is worried about and I don't know what Mr. McNeil is worried about. That's what's got me puzzled. I'd like to vote intelligently on it and I don't know what they're worried about.

CHAIRMAN FELT: The Delegate, Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman and Delegates, I, too, have been sitting here for quite a while, trying to understand the issue and it seems to me that if I could try to state it, maybe someone can answer it and help. One of the problems

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is we're trying to answer two problems with one section, it seems to me. One is an external one of how to protect our water rights from others. The other is an internal fight in terms of the priorities by which our water is going to be allocated within the state, and it's just very difficult to come to a clarification when you're trying to settle both these issues in one single subdivision of our section. Is there someone who could speak to that and tell me otherwise, or is that really our problem. We are trying to solve two things with one amendment, or, rather, one statement and it just is never going to be done. Mr. Mahoney, would you yield to a question?

DELEGATE MAHONEY: (No audible response)

DELEGATE BURKHARDT: Mr. Chairman, would Mr. Mahoney yield to a question?

CHAIRMAN FELT: Do you yield, Mr. Mahoney?

DELEGATE MAHONEY: Yes.

DELEGATE BURKHARDT: Earlier today, Mr. Mahoney, you spoke of the fact that Montanans are going to have to get together in order to make this thing work. And, as I have now stated the problem, does that seem to be related to what we are talking about or have I missed the whole sense of it as we have talked?

DELEGATE MAHONEY: Would you repeat what you said?

DELEGATE BURKHARDT: My statement was, we're trying, it seems to me, to do two things in one subsection. We are

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trying to guarantee that we won't be drained of our potential water use by downstream users and at the same time we are trying to set priorities for the use within the state, and I don't think it can be done in one section in the Constitution. Could you clarify that, or help me?

DELEGATE MAHONEY: Well, you're probably correct in this point, that you're setting two things. All I'm trying to do here in this Convention -- as I told you, I don't think we can fight amongst ourselves. We'd better compromise now than to get North Dakota in on the compromising, or South Dakota. Now, I'm not worried -- and it's just as much Nebraska. Those are the downstream states. Now, I think that I could live with the present section four. I have no objection to the original amendment as presented by Mr. Wilson. I do, though, question to go down to the point of making junior and senior rights around here because this might be wrong. And, now, have I answered your question? If I haven't, I --

DELEGATE BURKHARDT: Mr. Chairman, could I try again and perhaps not with Mr. Mahoney, but just to state the thing? I do appreciate your comments.

CHAIRMAN FELT: Delegate Mr. Burkhardt may speak on the motion.

DELEGATE BURKHARDT: Fine. Thank you, Mr. Mahoney, and it wasn't that you confused me more, it's just that some of you have been wading around in water law most of your lives

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and others of us are going to have to make a decision, and you are not helping us, it seems to me, to clarify the issue. Some of you have been in this same business and you are giving us opposite points of view, which only says to me you are protecting the interests of one group or another within our state. You are not looking at the overall picture. If I understand this section four and the amendment as we now have it, and whether or not I am going to be willing to delete it, I have to understand this. It seems to me that what's being said is, first of all we have nothing now in the Constitution about water rights. Therefore, we put something in to protect ourselves for the future, as in relationship to people outside this state. One comment I would make is that seven hundred thousand people are never going to have it in a land where one man, one vote is involved and we are going to be looking at uses all up and down, so eventually federal legislation is going to take precedence over what we are deciding to do, and I think Jerry Loendorf was on target with that one. Another point it seems to me we have to think about and this is, what I am understanding is that the people who have been using the water have it over-appropriated now and if we legitimize another beneficial use, their already over-appropriated uses are endangered even further. They don't want to come into the legislature on equal terms with the fish and game and fight it out. They don't want to come in and fight it out there. They want to have a guaran-

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tee that it will be on a junior basis when they get here and I'm, you know, just confused at this point. I'd like to see it a beneficial use and I'd like to see them have to fight it out in the legislature as to how that gets allocated, and it seems to me that the way it's presented to us now, it's very difficult for someone who hasn't waded around in this for a long, long time to make any kind of intelligent decision. Thank you.

CHAIRMAN FELT: The Delegate, Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I would like to answer Mr. Burkhardt. By section three, we have provided that all waters will be held for the state and the people of Montana. From there on we have turned into a legislative assembly and each of us has our own little pet that we're trying to get into this Constitution. Therefore, we should delete section four.

CHAIRMAN FELT: The Delegate, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, Mr. Holland has left but I think he is under a gross misapprehension. The idea, for the rest of you who may have the same confusion, the idea of appropriating this water now is so that some time in the future North Dakota can't take it and deprive us of it. Now, the water skiing he might want to do, when North Dakota gets a prior right to it for having used it or using it, they could just empty that lake or that river or whatever it is, and Dave Holland wouldn't have any place to water ski. Now, to Mr. Burkhardt, so far as trying to do two things in one section, that's

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true. We are, Mr. Burkhardt. We are trying to do two things in one section but they are totally interrelated. It's necessary to do two things in one section to accomplish the purpose that Mr. McNeil and his committee are after. You are also right when you say there's a selfish interest here. I admit to the selfish interest here and it stems from this one thing, and that's the worry that the legislature, when it does do this, will not put the proper priorities on the use of that water. Does that help any?

DELEGATE BURKHARDT: May I answer, Mr. Chairman?

CHAIRMAN FELT: The Delegate may speak again.

DELEGATE BURKHARDT: Thank you, Mr. Chairman, and I hear you, Mr. Schiltz, and what you are saying is that we are prepared in this body to make a better decision than will the legislature, and I think it may be time to seriously question that.

CHAIRMAN FELT: I don't think we need a lot of additional explanations or summaries. The Delegates must be getting ready to vote.

The Delegate, Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I have a question I'd still like cleared up. I think we're all in the same -- have the same problem Mr. Burkhardt does, but I wonder if Mr. Schiltz will yield to a question?

DELEGATE SCHILTZ: Yes.

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CHAIRMAN FELT: The Delegate, Mr. Schiltz, yields.

DELEGATE ECK: Under this provision, as amended, would not the provision that the legislature may, for blue ribbon trout streams, be crossed out?

DELEGATE SCHILTZ: I don't know. I'd have to ask Mr. McNeil that. I don't know that much about blue ribbon trout streams, but from --

CHAIRMAN FELT: Does the Delegate, Mr. McNeil, wish to respond to the question?

DELEGATE McNEIL: Mr. Chairman, it could be so interpreted, yes.

CHAIRMAN FELT: The Delegate, Mrs. Eck, are you satisfied or are you done?

DELEGATE ECK: Yes, that was the interpretation that I had that these did provide for minimum flows in these streams and I can't see that they would have any right for it under this.

CHAIRMAN FELT: Members of the committee, there are, I believe, six additional amendments that are up here that have not been taken up, in addition to those that are before us, and the hope of completing our work without a night session is rapidly dwindling, and you can again keep that in your minds.

The gentleman, Mr. James.

DELEGATE JAMES: Yes. Mr. Felt, I, like Delegate Burkhardt, am a little bit confused and I consider myself equal

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with Delegate Holland. I know that water flows downstream. I also know, along with Delegate Romney, that you can shut off water downstream by building dams and using the water and we hear about -- talk about denying water to North Dakota and using it first. Is this the idea? Now, the Missouri river is also the lifeblood of the state of North Dakota. Just what are we attempting to do here, Mr. McNeil? Will you yield?

CHAIRMAN FELT: Will Mr. McNeil yield?

DELEGATE McNEIL: I yield. I think I can answer that with a two minute summary that I started the day out with that apparently everyone has forgotten.

CHAIRMAN FELT: Please do that.

DELEGATE McNEIL: That is -- the question ultimately, probably will be determined, as suggested by Delegate Loendorf, in a federal court. They will look at the state's law. They will up -- they will divvy up the water in accordance with the uses that have been made of that water. Not just the ownership -- they, of course, will look at ownership, which we have taken care of in subparagraph three. What we are trying to do in subparagraph four is say, Montana recreation, without a diversion, is a valid use that is recognized in Montana law so that we can say that we are using the water. With our present law, our present absense of such a statement in the Constitution or statutory law, when we get into that federal court with the downstream states, they say under your present law you've got

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irrigation, domestic, municipal, and that's it. Remember, this does not apply to appropriated water. It's only those waters that now have no water rights on them, which means it doesn't talk about the Beaverhead and the Gallatin that are over-appropriated. It's at the tail end of the stream where there are large quantities of water that we don't have any claim on now, that we are not, under our present law, we don't have any recognized use. The legislature has refused to do this because of this kind of telegram. That's why we are trying to get it in here.

CHAIRMAN FELT: The Delegate, Mr. Anderson.

DELEGATE OSCAR ANDERSON: Well, I live approximately on the banks of the Yellowstone and about twenty miles or less from the Missouri river where the Missouri and the Yellowstone go together, and all I know is that I've seen enough of this water flowing down both those rivers that can be used by other states, and when we want to use this water some day, I want to see a law, or the framework in our Constitution, where we could preserve this water to ourselves, if possible. Now, I have watched them water ski over on Lake Sacajawea, I've seen this whole Garrison diversion project, and I know that if Montana needed that water, some day had a use for that water that has been appropriated by North Dakota, they don't have it. They already have some rights to water that flows out of Montana, and I want to see us reserve full use of our water rights

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to Montana, but I sure don't know how to do it. I wish I was smart enough to figure it out.

CHAIRMAN FELT: The Delegate, Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I wonder if all the other Delegates are faced with the same dilemma? You know, I spoke before in support of the majority proposal. I am still in support of the majority proposal, but I'm so afraid that if other things are tacked onto it we are going to really be worse off than if we deleted it. So, I'm really torn between deleting this because something else might come up. Now, I sat in on that meeting during the recess and it was pure legislative work. I mean, I think that it's just ridiculous for us to try to legislate in the brief time that we have. I think that, as Charley Mahoney says, we should leave it to the wisdom of the legislature and I notice that in the last sentence of the majority proposal it says that the legislature may designate priorities for the future rights if necessary. I am still for the majority proposal, but my question to you, Mr. Chairman -- you said you have several amendments there. If we pass this, if I vote for the majority proposal, is there a danger of having these other amendments tacked onto it? Perhaps I would be better off, since I'm for recreation as a beneficial use, perhaps we are all better off to delete the entire section.

CHAIRMAN FELT: Most of these, I believe, are to succeeding sections of this article.

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DELEGATE REICHERT: Fine. So, if we vote for the proposal there will not be the danger of having --

CHAIRMAN FELT: Well, I couldn't assure you of that. Of course, anyone could make motions to amend -- anything can come up yet, but I'm just letting you know there's quite a lot here already.

The gentleman, Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, fellow delegates, I have a letter here from one of the grand old men of water development in the state of Montana, Mr. Dick Fabrick, who has an illustrious background. He is former chairman of the state planning board. He's a former member of the state water conservation board, the state forestry board, the state soil conservation committee. He served on the national reclamation association as our national director for many years, and I'd just like to read his opinion of this proposal to you. In his own words he says, if subsection four of section three of this proposal is adopted and under its provisions the prior water right for recreation is established, it would give priority status to one water right over all other uses. It would becloud subsequent appropriations for municipal, agricultural, industrial and other beneficial uses and degrade the values of such subsequent water rights because the waters were already appropriated for recreational use. The water saved and protected for recreation use would flow undiminished into down-

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stream storage for downstream benefits of power development, navigation and pollution abatement. This prior recreational water right would favor competitive uses in downstream states by restricting or limiting future water development in Montana. The adoption of subsection four of section three of this proposal would harm the general interests of Montana. It has no place in the Constitution of the state. It should be eliminated from this proposal.

CHAIRMAN FELT: The gentleman, Mr. Siderius, for what purpose do you rise?

DELEGATE SIDERIUS: Mr. Chairman, I was just wondering if -- it seems that everybody wants to do the best thing possible for this water, and it is so vital I think we should. Would it be possible, or would I be in order or out of order if I moved to set this aside for a later date and let some experts mull this over until we get something concrete for this Convention?

CHAIRMAN FELT: Such a motion would be in order, Mr. Siderius. In an attempt, which may be a failure, to simplify this, I believe that the proposal of the committee is an attempt to lay the groundwork for a future law suit in federal court. Those who oppose it and wish to delete it, in general think they are creating too much havoc in trying to do it, and that the risks of that are too great.

DELEGATE SIDERIUS: Would a motion be in order then?

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CHAIRMAN FELT: A motion would be in order, Mr. Siderius.

DELEGATE SIDERIUS: I so move.

CHAIRMAN FELT: Your motion is to postpone until --

DELEGATE SIDERIUS: Until some agreement can -- let's see -- until -- you want a date set, I suppose.

CHAIRMAN FELT: How about the end of the article -- until we reach -- move it to the end of the article.

DELEGATE SIDERIUS: Right.

CHAIRMAN FELT: The motion is to postpone the decision on subsection four until -- and to take it up again when we have completed the rest of the article. All in favor of the motion, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No.

CHAIRMAN FELT: The Noes have it. The motion is defeated. Mr. McDonough, would you wish to close?

DELEGATE McDONOUGH: Mr. Chairman, as Joe McCarvel just told me now, now I know why the Missouri is called the Great Muddy because really -- and I'm half serious on that. The thing is, we don't really know what we're talking about again. We can talk all day and we still don't know all the ramifications of section four. This is really legislation. It's something for the legislature to do. And, if in the future

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we do get in a law suit with the state of North Dakota and the federal government and the state of South Dakota and the other states on down the river, we want to be on all fours. You don't go into law suits, if you can prevent it, without being on all fours and without having the facts and everything on your side before you even start the law suit. You think about that first. You don't go willy-nilly and then we'll take care of it if we get into a law suit. And, really, the legislature is the best prepared to decide the laws and the priorities and the uses and the beneficial uses than what this Convention is this afternoon in three hours of debate, and therefore, I would like to renew my motion -- or, urge you to support my motion to delete.

CHAIRMAN FELT: The question now arises on the motion to delete -- the gentleman, Mr. Heliker, did you wish to speak?

DELEGATE HELIKER: I ask for a roll call vote.

CHAIRMAN FELT: Oh, a roll call, yes. The question now arises on the motion to delete subsection four in its entirety. There will be a roll call. Those in favor of the motion will signify by voting Aye; those opposed will vote No. Has every member voted?

(No response)

CHAIRMAN FELT: Does any member wish to change his vote?

(No response)

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CHAIRMAN FELT: If not, the Clerk will record the vote.

Aasheim	-	Aye	Cate	-	Nay
Anderson, J.	-	Nay	Champoux	-	Nay
Anderson, O.	-	Aye	Choate	-	Aye
Arbanas	-	Nay	Conover	-	Nay
Arness	-	Absent	Cross	-	Nay
Aronow	-	Nay	Dahood	-	Aye
Artz	-	Nay	Davis	-	Aye
Ask	-	Aye	Delaney	-	Nay
Babcock	-	Aye	Driscoll	-	Aye
Barnard	-	Nay	Drum	-	Aye
Bates	-	Aye	Eck	-	Absent
Belcher	-	Aye	Ercmann	-	Nay
Berg	-	Aye	Eskildsen	-	Absent
Berthelson	-	Aye	Etchart	-	Aye
Blaylock	-	Aye	Foster	-	Nay
Blend	-	Nay	Furlong	-	Aye
Bowman	-	Aye	Garlington	-	Aye
Brazier	-	Aye	Graybill	-	Absent
Brown	-	Aye	Gysler	-	Nay
Bugbee	-	Aye	Habedank	-	Aye
Burkhardt	-	Aye	Hanson, R. S.	-	Nay
Cain	-	Absent	Hanson, R.	-	Aye
Campbell	-	Excused	Harbaugh	-	Aye

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1	Harlow	-	Nay	Nutting	-	Aye
2	Harper	-	Nay	Payne	-	Excused
3	Harrington	-	Absent	Pemberton	-	Aye
4	Heliker	-	Nay	Rebal	-	Nay
5	Holland	-	Aye	Reichert	-	Nay
6	Jacobsen	-	Aye	Robinson	-	Nay
7	James	-	Aye	Roeder	-	Aye
8	Johnson	-	Aye	Rollins	-	Nay
9	Joyce	-	Aye	Romney	-	Nay
10	Kamhoot	-	Nay	Rygg	-	Aye
11	Kelleher	-	Absent	Scanlin	-	Nay
12	Leuthold	-	Aye	Schiltz	-	Nay
13	Loendorf	-	Aye	Siderius	-	Nay
14	Lorello	-	Aye	Simon	-	Nay
15	Mahoney	-	Nay	Skari	-	Aye
16	Mansfield	-	Nay	Sparks	-	Aye
17	Martin	-	Aye	Speer	-	Aye
18	McCarvel	-	Aye	Studer	-	Aye
19	McDonough	-	Aye	Sullivan	-	Aye
20	McKeon	-	Absent	Swanberg	-	Aye
21	McNeil	-	Nay	Toole	-	Absent
22	Melvin	-	Aye	Van Buskirk	-	Aye
23	Monroe	-	Nay	Vermillion	-	Nay
24	Murray	-	Aye	Wagner	-	Aye
25	Noble	-	Aye	Ward	-	Nay

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Warden	-	Nay	Woodmansey	-	Nay
Wilson	-	Aye	Chairman Felt	-	Aye

CLERK HANSON: Mr. Chairman, fifty-three Delegates voting Aye, thirty-six voting No.

CHAIRMAN FELT: The motion is carried. The Clerk will now read -- oh, just a second -- the proposed amendment of Mr. Berg. D you have that, Mr. Clerk? Here's a copy of it.

The gentleman, Mr. Berg.

DELEGATE BERG: Mr. Chairman, I did not anticipate at the time that I made this proposed motion that subsection four would be deleted, so I now move that instead of amending subsection four that in lieu thereof the following be substituted as subsection four. If the Clerk will read it, please?

CHAIRMAN FELT: Yes, the motion is being made by Mr. Berg to insert a new subsection four, which the Clerk will now read.

CLERK HANSON: (Reading) Mr. Chairman, I move to amend section three, subsection four, by inserting the following sentence: (quote) Jurisdiction to administer and control the right to the use of waters in adjudicated streams is vested in the district court. Signed, Berg. (End reading)

CHAIRMAN FELT: Does the gentleman, Mr. Berg, wish to speak on his motion?

DELEGATE BERG: I do. Mr. Chairman, of all questions

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that have been asked of me from constituents I represent in bo Park and Gallatin county, this is the one most important factor to them. You must remember that in our area that water is the lifeblood of our agricultural system and that water, for the most part, in all tributary streams has been adjudicated by the courts. There is very little water in the tributary streams of the Yellowstone river and of the upper regions of the Missouri, both in the Madison, the Gallatin, the Jefferson, and all the tributaries to the Yellowstone that are not adjudicated. Now, presently the district court administers those water rights and it is generally -- and it is generally -- am I on? -- and it is generally done through the system of a water commissioner. The proposal is rampant throughout the state to do away with this jurisdiction and the suggestion is frequently made that it should be placed in a state agency and the state divided into districts, presumably under the jurisdiction of a state engi=-eer who will resolve these problems, rather than have them resolved in the district court. Now, in our community the ranchers and the farmers, both large and small, are adamantly opposed to this suggested renovation, and to protect them, they have asked me, and I am presenting this amendment at their request, because this is what happens. The two -- there may be a dispute between ranchers on the distribution of water in their various ditches and the commissioner that is appointed by the court is in a position where he can't resolve it. Almost all

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of those disputes are quickly and thoroughly resolved when the commissioner and the disputed water right users go to their district judge and they get it taken care of on a hot Saturday afternoon in July. They are concerned that if they are required to take this before a district engineer at some future time or to, perhaps even into Helena, they will have chaos in the administration of their water rights system. I urge you to give this matter serious consideration. This is now taken care of by the district court through statute. There is always the possibility, at least in the minds of the people who I represent, that it might be changed and they are adamant against that change.

CHAIRMAN FELT: The gentleman, Mr. Etchart.

DELEGATE ETCHART: Mr. Berg, will you yield to a question?

DELEGATE BERG: I yield.

DELEGATE ETCHART: Mr. Berg, I am on the board of directors of the Glasgow irrigation district, which is a bureau of reclamation project, part of the Milk river project, and we have a water master, we have a project manager, and they administer the water on that project on close to a hundred thousand acres. Now, would this mean we would have to turn over control to the district judge?

DELEGATE BERG: Not unless the water is adjudicated by a judicial decree. That is, the water rights in that -- on

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that stream, if they have been determined and their priorities are set by the district court under an adjudication proceeding, then the court has jurisdiction. If it has not been, the court does not have jurisdiction and it would not apply to unadjudicated streams.

CHAIRMAN FELT: The gentleman, Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President -- Mr. Chairman, will Mr. Berg yield to a question?

DELEGATE BERG: I yield.

DELEGATE BLAYLOCK: Mr. Berg, if your proposed substitute motion were to pass, does that mean that the state legislature would not have control or could not legislate anything having to do with waters in our rivers?

DELEGATE BERG: No, it would not mean that. They can enact any law that they want regarding the use of those rights, regarding the priorities of them, but the administration of them and the control of the ditches and the streams that are under adjudication will remain in the district court as they are now.

CHAIRMAN FELT: The gentleman, Mr. Habedank.

DELEGATE HABEDANK: Mr. Berg, will you yield to a question?

DELEGATE BERG: I yield.

DELEGATE HABEDANK: Mr. Chairman. The fact that you said jurisdiction to administer and control this water would

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not preclude appeals to the supreme court, would it?

DELEGATE BERG: Of course not. That's all that is vested in the district court.

CHAIRMAN FELT: The gentleman, Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman.

CHAIRMAN FELT: Yes, Mr. McNeil.

DELEGATE McNEIL: The committee thoroughly considered this matter. Delegate Berg just stated that it is now taken care of through statute. I think that's the precise reason we emasculated our section four as proposed by the committee. Subsection six, the comments of which I read into the record several hours ago, specifically says that this does not in any way change the present legislatively established system of local control of adjudicated waters by water commissioners appointed by the district court. This is taken care of. It is the present system. Our subparagraph six preserves it. It makes no changes. There's one thing that Delegate Berg is overlooking and that is that some time in the future the district courts themselves might not want to do this, and it would be locked into the Constitution.

CHAIRMAN FELT: Does the Delegate, Mr. Berg, wish to close?

DELEGATE BERG: I will close.

CHAIRMAN FELT: The question now arises on the motion to add a sentence as subsection four to read as follows: Jur-

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isdiction to administer and control the right to the use of water in adjudicated streams is vested in the district court. All in favor of the motion --

DELEGATE BERG: I thought perhaps I would close. I'll be very brief.

CHAIRMAN FELT: Oh, I thought you meant that you had closed. I'm sorry. Go ahead.

DELEGATE BERG: The very evil of which Mr. McNeil speaks is the evil that the people I represent want to avoid. Let me tell you, we went to a meeting about three weeks ago at home -- we had about a hundred and fifty people there. We've never had that many before, and at least a hundred of them were there concerning this very problem. They are not satisfied with leaving it to the legislature. They don't want this system disturbed.

CHAIRMAN FELT: Those in favor of the motion will signify by voting Aye --

DELEGATE CHAMPOUX: Could we have a recorded vote, please?

CHAIRMAN FELT: The request is made for a roll call vote. Sufficient seconds made, the members will -- those in favor of the motion will signify by voting Aye; those opposed will vote No. Has every member voted?

(No response)

CHAIRMAN FELT: Does any Delegate wish to change his

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vote?

(No response)

CHAIRMAN FELT: If not, the Clerk will record the vote.

Aasheim	-	Nay	Cain	-	Nay
Anderson, J.	-	Aye	Campbell	-	Excused
Anderson, O.	-	Nay	Cate	-	Aye
Arbanas	-	Absent	Champoux	-	Nay
Arness	-	Absent	Choate	-	Absent
Aronow	-	Nay	Conover	-	Aye
Artz	-	Nay	Cross	-	Nay
Ask	-	Nay	Dahood	-	Absent
Babcock	-	Absent	Davis	-	Absent
Barnard	-	Aye	Delaney	-	Nay
Bates	-	Aye	Driscoll	-	Nay
Belcher	-	Aye	Drum	-	Absent
Berg	-	Aye	Eck	-	Aye
Berthelson	-	Nay	Erdmann	-	Aye
Blaylock	-	Nay	Eskildsen	-	Nay
Blend	-	Nay	Etchart	-	Nay
Bowman	-	Nay	Foster	-	Nay
Brazier	-	Absent	Furlong	-	Nay
Brown	-	Nay	Garlington	-	Nay
Bugbee	-	Nay	Graybill	-	Absent
Burkhardt	-	Nay	Gysler	-	Nay

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1	Habedank	-	Nay	Melvin	-	Nay
2	Hanson, R. S.	-	Absent	Monroe	-	Nay
3	Hanson, R.	-	Absent	Murray	-	Nay
4	Harbaugh	-	Absent	Noble	-	Nay
5	Harlow	-	Nay	Nutting	-	Aye
6	Harper	-	Nay	Payne	-	Excused
7	Harrington	-	Absent	Pemberton	-	Aye
8	Heliker	-	Nay	Rebal	-	Nay
9	Holland	-	Nay	Reichert	-	Nay
10	Jacobsen	-	Aye	Robinson	-	Nay
11	James	-	Nay	Roeder	-	Nay
12	Johnson	-	Nay	Rollins	-	Absent
13	Joyce	-	Nay	Romney	-	Nay
14	Kamhoot	-	Nay	Rygg	-	Nay
15	Kelleher	-	Absent	Scanlin	-	Nay
16	Leuthold	-	Aye	Schiltz	-	Nay
17	Loendorf	-	Nay	Siderius	-	Nay
18	Lorello	-	Nay	Simon	-	Aye
19	Mahoney	-	Nay	Skari	-	Nay
20	Mansfield	-	Nay	Sparks	-	Nay
21	Martin	-	Aye	Speer	-	Nay
22	McCarvel	-	Nay	Studer	-	Aye
23	McDonough	-	Nay	Sullivan	-	Nay
24	McKeon	-	Absent	Swanberg	-	Nay
25	McNeil	-	Nay	Toole	-	Absent

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Van Buskirk	-	Absent	Warden	-	Nay
Vermillion	-	Nay	Wilson	-	Nay
Wagner	-	Nay	Woodmansey	-	Nay
Ward	-	Nay	Chairman Felt	-	Nay

CLERK HANSON: Mr. Chairman, sixteen voting Aye; sixty-four voting No.

CHAIRMAN FELT: The motion has failed. The Clerk will read section five -- subsection five.

CLERK HANSON: (Reading) Subsection five: Priority of appropriation for beneficial uses shall give the better right. No appropriation shall be denied except when such denial is demanded by the public interests. (End reading) Mr. Chairman, subsection five.

CHAIRMAN FELT: The gentleman, Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration section three, subsection five, of proposal number six, it recommend that the same be adopted.

CHAIRMAN FELT: Members of the committee, unless there's discussion, the question now arises on the motion to --

The gentleman, Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, this language was taken out of my Delegate Proposal Number Forty-Eight and I made a drafting error. I would like to move to delete the second sentence in that section.

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CHAIRMAN FELT: Yes, I see we have a motion here that was just handed to me which would also delete that and insert -- is this from you?

DELEGATE ETCHART: No, I believe that Mr. Wilson submitted it.

CHAIRMAN FELT: Oh, all right.

DELEGATE ETCHART: But, it should be deleted because it makes reference to a controlling body which we haven't incorporated in this article.

CHAIRMAN FELT: Will the Clerk read the proposed amendment to subsection five? Well, read it as a motion but I see that the other copy shows that it has been signed by Mr. Wilson, so this must be the one Mr. Etchart is speaking of. Anyway, read the --

CLERK HANSON: (Reading) Mr. Chairman, I move to amend section three, subsection five, page four, being lines twenty-three, twenty-four and twenty-five, by deleting the following language, quote, no appropriation shall be denied except when such denial is demanded by the public interests; and by inserting in lieu thereof the following new material, quote: Priority of appropriation for beneficial uses shall give the better right. Signed, Wilson. (End reading)

CHAIRMAN FELT: The Delegate, Mr. Wilson.

DELEGATE WILSON: Mr. President, in view of the explanation of what Mr. Etchart has just told you, I think this

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is -- could be legislative. I think the briefer -- or, the more brief the explanation is, the better it is, and it wouldn't be controversial. So, I move that priority of appropriation for beneficial uses shall give the better right, period. I think that this is the best thing to do at this time to avoid controversy.

CHAIRMAN FELT: The Delegate, Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, this provision was placed in the article at the request of Delegate Etchart. If he wants it taken out -- I can't speak for the whole committee but I certainly have no objection. It serves no purpose and it would be better out of it.

CHAIRMAN FELT: The gentleman, Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, just so you're clear on this, now. I only want to take out the second sentence. I want to leave the language in: Priority of appropriation for beneficial uses shall give the better right. I want that left in. I want the rest of that deleted.

CHAIRMAN FELT: Without inserting the new material. Is that what you desire, too, Mr. Wilson?

DELEGATE WILSON: (Inaudible. Microphone not turned on.)

CHAIRMAN FELT: Do you want to delete the second sentence without inserting any new material?

DELEGATE WILSON: This is correct.

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CHAIRMAN FELT: All right, the motion, as corrected, in lieu of the motion as read by the Clerk, is simply to delete the second sentence of subsection five. Those are on lines twenty-three, four and five of page four. Are you ready for the question?

DELEGATE MAHONEY: Mr. Chairman.

CHAIRMAN FELT: The gentleman, Mr. Mahoney.

DELEGATE MAHONEY: Would somebody answer me what they're doing? I just don't understand this. Would we get somebody to explain what you're doing here?

CHAIRMAN FELT: The gentleman, Mr. McNeil, would you -- or Mr. Etchart?

DELEGATE ETCHART: Yes, I'll explain that. What I did, Charley, was I took that section from the Wyoming constitution, which is their section three, and I put that into my Delegate Proposal because I wanted to have something in there that would specify the priority of rights. In other words, the principle, first in time is first in right. I didn't realize, though, that the second sentence makes reference to -- in their constitution to a board of control and we don't have a board or any administrative body mentioned in this present article, so it would be inconsistent with what we are doing here. So, it was my error in leaving it in when I originally drafted my Delegate Proposal Forty-Eight.

CHAIRMAN FELT: Does the gentleman, Mr. Mahoney, wish

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to speak?

DELEGATE MAHONEY: Mr. President, I would say if we have cut out number four, I don't see why we couldn't cut out number five and leave that to the legislature. I just wonder if we need it in there. Maybe I'm wrong. Maybe I don't see the great importance of this. I'm not making that as a motion but I'm just wondering.

CHAIRMAN FELT: The Delegate, Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President, I think that section six is just as important as section three. These are the only two that I really am concerned --

CHAIRMAN FELT: Subsection five is the one that we are on right at the moment.

DELEGATE ERDMANN: Well, pardon me. He asked why number six couldn't come out, too. I'll wait until later.

CHAIRMAN FELT: He spoke about five, I believe.

DELEGATE ERDMANN: That's right.

CHAIRMAN FELT: The Delegate, Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I think maybe we're getting a little rum-drum here. I'm sure I am, but if I read this correctly, we go back to section three and we have given the legislature the power to appropriate water for beneficial uses. That seems to me -- now, if we go down to five, if we emasculate it like we're talking about -- priority of appropriation for beneficial uses shall give the better right -- will

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this not give the recreation and the fish and game the right to use water from now on, assuming that the legislature may make them as a beneficial user? Then, down here, we've undone all we've been talking about all day of giving them a junior right. Thank you, Mr. Chairman.

CHAIRMAN FELT: The Delegate, Mr. Swanberg.

DELEGATE SWANBERG: Yes, Mr. President. I believe it is a general statement of irrigation law that priority in time is superior, but I think there will be cases and I think the law recognizes these cases where a junior user may well have, in the public interests, a superior claim on the water. I can't right offhand imagine a real good example, but suppose a new town was established and suppose some water user or rancher or somebody had appropriated all the water from that stream that could be used for the water supply for that town. It would seem to me that the interest of the people that were in that community would be superior to one person who owned a ranch. I could also foresee cases in the development of our natural resources for recreational purposes, where perhaps one person, having appropriated all the water from some certain stream, could block any efforts on the part of the recreation people to make a dam, for instance, and use the water for fishing and things of that nature. And, I think that our state law does take those things into account. I think this priority in time is only a statement of general rule, and general rules

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always have many exceptions in the law, but if we put it in the Constitution as a matter of a flat out statement that priority in time is always superior, then these very important exceptions would go down the drain, and I would resist -- this whole section five, I think, should be deleted.

CHAIRMAN FELT: The gentleman, Mr. Davis.

DELEGATE DAVIS: Mr. Chairman, actually the priority of appropriation for beneficial use shall give the better right is what our water law has been since its inception. The second sentence, the public interest is already recognized. When the highway goes through and takes part of a farm and takes part of the water necessary for it, it's under the theory of eminent domain, which is provided for. You can take that. If a city needs some water and there's only so much there and it has to be under the theory of eminent domain they can take it. Actually, there's no board to determine this and it only would apply, the second sentence, to future appropriations. Anyway, it's merely a restatement of our existing water law -- the priority of appropriation for beneficial use shall give the better right -- and I submit it should be in the Constitution as a fundamental principle as to what -- there are several different fundamental types of water law and this states the type that we have always had and will continue to have.

CHAIRMAN FELT: Delegate Mr. Vermillion.

DELEGATE VERMILLION: Mr. Chairman, is a substitute

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motion in order at this time? I'm not clear about this and I'm not sure of the reason why we do need that in there, so I would like to make a substitute --

CHAIRMAN FELT: A substitute motion is in order.

DELEGATE VERMILLION: If I may, I would like to make a substitute motion, then, to delete subsection five in its entirety. I'm not sure that there is any necessity of putting this in a constitution and there may be some dangers.

CHAIRMAN FELT: A motion has been made to delete both sentences of section five. If there is no further discussion, the question now arises on the motion to delete subsection five. Those in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No.

CHAIRMAN FELT: The Chair is in doubt. We will use the machine on a division vote. Those in favor of deleting subsection five in its entirety will vote Aye, and those opposed will vote No. Has every member voted?

(No response)

CHAIRMAN FELT: Does any member wish to change his vote?

(No response)

CHAIRMAN FELT: If not, the Clerk will tally the vote.

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CLERK HANSON: Mr. Chairman, forty-six voting Aye, forty-one voting No.

CHAIRMAN FELT: The motion is carried. Subsection five has been deleted.

The Delegate, Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, members, I move that we recess until seven-thirty this evening.

DELEGATES: No.

CHAIRMAN FELT: The motion to recess is a non-debatable motion, and I might mention for the benefit of the Delegates that we do have an article on agriculture which we will also be taking up -- I think it's on page thirteen in your book. The question now arises on the motion to recess until seven-thirty, P.M. Those in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No.

CHAIRMAN FELT: The Chair is in doubt. We will use the machines. Those in favor of the motion to recess will vote Aye; those opposed will vote No. Has every member voted?

(No response)

CHAIRMAN FELT: Does any Member wish to change his vote?

(No response)

CHAIRMAN FELT: If not, the Clerk will tally the vote.

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CLERK HANSON: Mr. Chairman, thirty-six voting Aye, forty-five voting No.

CHAIRMAN FELT: The motion has failed. The Clerk will read subsection six.

CLERK HANSON: (Reading) Subsection six: The legislature shall provide for the administration, control and regulation of water rights and shall establish a system of centralized records. (End reading) Mr. Chairman, subsection six.

CHAIRMAN FELT: The gentleman, Delegate Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that when this committee does rise and report, after having under consideration section three, subsection six, of proposal number six, it recommend the same be adopted.

CHAIRMAN FELT: The Delegate, Mrs. Erdmann, for what purpose do you arise?

DELEGATE ERDMANN: I wish to speak on this.

CHAIRMAN FELT: That will be fine, Mrs. Erdmann, and I might just call your attention to the fact that there is an amendment to subsection six which has been presented. Would you care to speak before that is read?

DELEGATE ERDMANN: No.

CHAIRMAN FELT: All right, we'll recognize you very quickly as soon as -- the Clerk will read the amendment which has been offered to subsection six.

CLERK HANSON: (Reading) Mr. Chairman, I move to

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amend section three, subsection six, in line twenty-eight, by adding, quote: in addition to the present system of local filing of records. It must go after the period, Mrs. Bates?

CHAIRMAN FELT: The Delegate, Mrs. Bates.

DELEGATE BATES: Yes. This is what -- Mr. Chairman, this is what is done now. The records are in the county court houses or the district courts, and I feel that this should be retained because this is where these things are decided and for local reference, even though there is a central record-keeping within the -- perhaps the offices in Helena, and I think this is necessary to provide central recording of water rights, but it is also necessary to keep the present water records that are now in the county courthouses or in the district courts, and that was the reason I added this. If you wish to delete the entire section that, too, can be done but I feel that it is necessary if we are going to have a central recording system that we should have the local provision kept.

CHAIRMAN FELT: The Delegate, Mr. Berg.

DELEGATE BERG: As a substitute motion, I move to delete all of subsection six of section three, I think it is.

CHAIRMAN FELT: Yes, it's section three. Do you wish to speak on your motion?

DELEGATE BERG: I'll speak on the motion. So long as we have decided that we're going to leave everything to the legislature with regard to water rights, their priorities,

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their jurisdiction, how they're going to be handled, then I see no point in centralizing records and specifying that in the Constitution, or localizing records and specifying that in the Constitution. I want it deleted.

CHAIRMAN FELT: The Delegate, Mrs. Erdmann.

DELEGATE ERDMANN: I speak in favor -- against the deletion and in favor of Mrs. Bates' amendment. I think this is a vitally important section to have in here because the legislature has not provided this, although they have known about this moratorium coming up, and actually, all of these other states can take all of the water that we do not have appropriated, and how in the world, if you leave it up to the legislature and they don't do this, how are we going to be able to present a well-documented need for our state? As it is now, every single one of our courthouses have all of these records. Every single county has filed many times over for all of the water that now flows or ever will flow in the water -- in the rivers, and I think to make some order out of that chaos, I think it wouldn't hurt at all to direct the legislature to provide for a central documentation of these records. Thank you.

CHAIRMAN FELT: Does the Delegate, Mr. -- the Delegate, Mr. Scanlin.

DELEGATE SCANLIN: In the name of consistency, I rise in support of Mr. Berg's motion.

CHAIRMAN FELT: Does the Delegate, Mr. Berg, wish to

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close?

DELEGATE BERG: I would just say, I have closed.

CHAIRMAN FELT: The question now -- the Delegate, Mr. Wilson, do you wish to speak? We'll give you another opportunity to close, Mr. Berg.

DELEGATE WILSON: Mr. President, I agree with Mrs. Erdmann that this is a necessary thing to have in the Constitution and I think the localized records should be available to the local people in the courthouse. I agree that there should be a centralized place in the state of Montana, in Helena, for the keeping of the records and filings, but I also agree that the local records should be available to the people at the local level at the courthouse.

CHAIRMAN FELT: Delegate Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, I agree with Mr. Berg in this situation. They do have a -- the state water board now are going through the counties and they have records of the -- of all -- in all cases where they have done this, and the records are in the local systems, so I see no reason for this article.

CHAIRMAN FELT: The question now arises on the motion of the gentleman, Mr. Berg, unless he wishes to speak again.

DELEGATE BERG: I close.

CHAIRMAN FELT: Those in favor of the motion to delete subsection six will signify by voting Aye.

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DELEGATES: Aye.

CHAIRMAN FELT: Those opposed will vote No.

DELEGATES: No.

CHAIRMAN FELT: The Ayes have it.

UNIDENTIFIED DELEGATE: Division.

CHAIRMAN FELT: Well, all right. If you're that late again, you won't get it because I waited quite a while before rapping. Those in favor of the motion to delete subsection six will vote Aye on the voting machine, and those opposed will vote No. Has every member voted?

(No response)

CHAIRMAN FELT: Does any member wish to change his vote?

(No response)

CHAIRMAN FELT: If not, the Clerk will tally the vote.

CLERK HANSON: Mr. Chairman, forty-two Delegates voting Aye, forty-four voting No.

CHAIRMAN FELT: The motion has failed. The question now arises on the motion of Delegate Bates to amend subsection six by adding the words, in addition to the present system of local filing of records.

DELEGATE BATES: Mr. Chairman.

CHAIRMAN FELT: Yes.

DELEGATE BATES: We deleted this section so I can't see how we can --

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CHAIRMAN FELT: The motion failed, Mrs. Bates.

DELEGATE BATES: Oh, I'm sorry.

CHAIRMAN FELT: All in favor of the motion to amend will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Those opposed will vote No.

DELEGATES: No.

CHAIRMAN FELT: The Ayes have it. So ordered. The question now arises on the motion of Delegate Murray to adopt subsection six, as amended. Those in favor of the motion will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Those opposed will vote No.

DELEGATES: No.

CHAIRMAN FELT: The Ayes have it. The Clerk will read section four.

CLERK HANSON: (Reading) Section four, Cultural Resources: The legislature must provide for the identification, acquisition, restoration, enhancement and preservation of scenic, historic, archeologic, scientific, cultural and recreational areas, sites and objects, and their use and enjoyment by the people. (End reading) Mr. Chairman, section four.

CHAIRMAN FELT: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that when this committee does rise and report, after having had under consid-

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eration section four of proposal six, that it recommend the same be adopted.

CHAIRMAN FELT: We have two proposed amendments, I believe. I think the first one -- well, Mr. Clerk, which one is first in order? The one of Mr. Jacobsen's? We'll take the one that comes first in order. I believe there are three of these. I don't have them all.

CLERK HANSON: (Reading) Mr. Chairman, I move to amend section four, page four, line twenty-nine of the Natural Resources and Agriculture Committee proposal by adding after the words, Cultural Resources, a subsection one. And further amend section four, page five, line three by striking the comma after the word, objects-- line three, the comma after the word, objects, and inserting in lieu thereof a period; and further amend section four, page five, by deleting the remainder of lines three and four. Delete the following words, and their use and enjoyment by the people; and further amend section four by adding a new subsection two by inserting the following language and punctuation: Subsection two: The legislature must reserve such places from the public domain and provide for their administration and their use and enjoyment by the people. Mr. Jacobsen. (End reading)

CHAIRMAN FELT: Mr. Jacobsen and members of the committee, we will first have an explanation of the proposal as it appears from the committee report.

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The Delegate, Mr. Rebal.

DELEGATE REBAL: Thank you, Mr. Chairman. In response to widespread citizen and Delegate interest in preserving our ghost towns, as well as our scenic, archeologic, scientific, cultural and recreational areas, sites and objects, your committee proposes this self-explanatory section. The committee felt that such a section was appropriate in an article providing for protection of our total environment for this and future generations, and I move we accept that.

CHAIRMAN FELT: All right. The gentleman, Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President and fellow Delegates, I want to take the time to thank the committee for the excellent job they had in writing that up. It's almost the same words. However, the -- and I won't go into what I had prepared here because of time -- but we haven't used the word, administration. I have talked to the fish and game department and the Montana historical society about this thing. We have over fifty historical societies in the state of Montana. There are over five hundred ghost towns in Montana, as well as many, many other sites that must be preserved. But, we must have administration of them. There is one thing I would just like to read from the Montana ghost town society letter that I believe all the Delegates received, and that -- this was, at the present time the only powers that the legislature has given to

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to the state board for the protection of ghost towns, scientific, historic, archeologic, cultural, scenic and recreational resources of the state is to the Montana fish and game commission under section 62-301, RCM 1947, as amended. The provision regarding historical and prehistorical structures which were found in section 75-1201, RCM 1947, was repealed by the 1971 legislature. By the repeal of this later act, no penalties or procedure or protection is offered to any historic or prehistoric site. Anyone may, without discrimination, dig and destroy artifacts and other historical data which should be recorded and preserved for our state. Unfortunately, no other power exists for the control and protection of these ghost towns, historical or archeological sites, other than the fact that anyone violating the rule of the fish and game commission concerning them shall be punished by a fine of not more than four hundred dollars or more than six months in the county jail or both. The historical society, I believe, would be very happy to have under its jurisdiction all of these historic sites and if the legislature were to be directed to administer this and put it under the hands of the Montana historical society -- the fish and game and the historical society are in agreement and I'm sure we could save these places and we must do it very soon for the simple reason that every year more of these ghost towns are disappearing through fires, through vandalism, and, as has been suggested, by just plain neglect. We

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could restore some of these places and there is federal money available to do such a thing, and we've talked about it in Demersville up in our Flathead area. However, that place is completely gone. So, I would just like the word and possibly what I said in my amendment is wrong. Possibly we should just use the word, administration, and place it at the end of the paragraph or between the word, administration -- I haven't got the thing here at all. Yes, enhancement and preservation and administration, you see, on line one on page five -- maybe just administration is all we need there, because the legislature is already directed to do so, so we don't need the whole paragraph, but I would be willing that Style and Drafting take this up. Thank you.

DELEGATE SCHILTZ: (Inaudible. Microphone not turned on.)

DELEGATE JACOBSEN: On line one, restoration and enhancement, preservation -- and then add in there, and administration.

CHAIRMAN FELT: Is that the motion you wish to make, Mr. Jacobsen?

DELEGATE JACOBSEN: Yes.

CHAIRMAN FELT: Members of the committee, is there any further discussion?

(No response)

CHAIRMAN FELT: If not, we are ready to vote on the

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motion to amend by inserting the words, and administration, on line one, page five, after the word, preservation. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No.

CHAIRMAN FELT: The Ayes have it.

CLERK HANSON: (Reading) Mr. Chairman, I move to amend section four, page five, line three, of the Natural Resources and Agricultural Committee majority proposal by inserting after the word, sites, and before the word, and, the word and punctuation, quote, comma, records, end quote. Signed, Brazier.

CHAIRMAN FELT: The gentleman, Delegate Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman.

CHAIRMAN FELT: Do you wish to speak on your motion?

DELEGATE BRAZIER: Very briefly, Mr. Chairman and fellow Delegates. The proposal is put in at the suggestion of Sam Gilluly of the historical society. I think it just got overlooked in the rush of things as we were preparing our majority report. Thank you, Mr. Chairman.

CHAIRMAN FELT: Members of the committee, the motion is to amend by inserting the word, records, on line three of page five, after the word, sites. All in favor of the motion signify by voting Aye.

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DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: (No response)

CHAIRMAN FELT: The Ayes have it.

The Delegate, Mr. Murray.

DELEGATE MURRAY: I understand that the other proposed amendment delivered to our desks has been withdrawn. Therefore, Mr. Chairman, I move that when this committee does rise and report, after having had under consideration section four of proposal number six, it recommend the same be adopted as amended.

CHAIRMAN FELT: The question now arises on the motion that when this committee does arise and report, after having had under consideration section four of the proposal of the committee on Natural Resources and Agriculture, number six, that the same be adopted, as amended. Those in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No.

CHAIRMAN FELT: The Ayes have it. Members of the committee, we will now consider any motions to reconsider or any further amendments to the article on environment and natural resources.

The Delegate, Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, having voted on the

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prevailing side of the Cate amendment in section two, reclamation, page four in the book, I move to reconsider this amendment.

CHAIRMAN FELT: The Delegate, Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I'll read what the section says and then I'll defer to another Delegate. Is that proper?

CHAIRMAN FELT: That will be proper.

DELEGATE KAMHOOT: Section two, reclamation. The section now reads: All lands disturbed by the taking of natural resources must be reclaimed to a beneficial and productive use. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources. I would now yield to Delegate Studer.

CHAIRMAN FELT: Delegate who?

DELEGATE KAMHOOT: Studer.

CHAIRMAN FELT: The Delegate, Mr. Studer.

DELEGATE STUDER: Mr. President, we have all made a serious mistake when we added the words, I quote, to a beneficial and productive use, to the reclamation section. All of us favor reclamation. We want to recognize this in our Constitution and we should, but by the addition of the words, to a beneficial and productive use, we have gone beyond a constitutional statement of principle. We have entered into a legislative field. By these words in our Constitution, we have re-

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tarded and hamstrung the future economic growth of our great state. These words require not only a beneficial use but also a productive use. We all know that this is impossible in many cases. Consider the farmer or rancher who has a gravel pit on his own place for his own use. In most cases it is impossible to reclaim it to a productive use. Consider the hardrock miner or prospector. With these words, he is faced with an impossibility and yet mining is our second largest industry in Montana. Consider the builder, the contractor of our highways. Each one of these depends on our natural resources from the earth, which in many cases cannot be reclaimed to a beneficial and productive use. They can be reclaimed, yes, but not necessarily to both a beneficial and productive use. I will now say a few words from the contractor's viewpoint. This is a very dangerous sentence, this beneficial and productive use. In the course of highway construction, many times we go into an area not necessarily now productive, take out rock or gravel from its present location, and by processing the material, make it into a usable product, such as a rock backfill or a gravel base or a hot mix top course. It would be nearly impossible for a contractor in many arid areas to make the used pit areas either beneficial or productive. Both are called for. How can I make a rock slope or a rocky or gravely base of a pit beneficial or productive? In nearly all cases the highway department has located areas of quarries and pits away

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from highways so they will not be seen by the traveling public and in most cases not even easily accessible to the public. So this part of the environmental problem can be taken care of if slopes are graded and sloped in regulations we now have to be restored to a condition as close as possible to its former condition. These words, reclaim to a beneficial and productive use, is ambiguous, dangerous, and could cause harm to many who are unable to comply with this directive. If enforced in some way, it could raise costs to ethereal heights. I submit to each of you, haven't we gone too far? We will and we should set forth the principle of reclamation in our Constitution but we have gone too far by the addition of these words. We have gotten into a legislative field. These words, if not taken out, will haunt us in years to come. Yes, they could well spell the defeat of the whole natural resources section of this Constitution when voted on by the people later on this year. I not only urge but I implore each of you to support the motion for reconsideration. Thank you.

CHAIRMAN FELT: The motion is to reconsider the action taken by the committee on section two.

The Delegate, Mr. Cate.

DELEGATE CATE: Well, I'm glad that Mr. Studer is against putting legislative things in the Constitution. I feel the same way about his right to work proposal. If we don't set any standards for reclamation, it doesn't mean anything and

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beneficial and productive use is about the most moderate language that we could possibly put in there, and I don't want to take a lot of time, but Mr. Studer asked me what he could do with his gravel pits, and so Mr. Champoux and I have a list of possibilities here. The -- I don't think I should take the time of the committee to discuss it further. I think it's a question --

CHAIRMAN FELT: You'll have an opportunity to speak, of course, if the motion does prevail.

The Delegate, Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, a clarification of a point of order. Have we voted for reconsideration yet?

CHAIRMAN FELT: No, that's the motion before us --

DELEGATE SCANLIN: Well, I simply want to --

CHAIRMAN FELT: -- simply whether or not we are going to reconsider --

DELEGATE SCANLIN: Mr. Chairman, I think we got in trouble once before on this business of debating an issue before we reconsidered it.

CHAIRMAN FELT: We permit some explanation of the purpose of the motion to reconsider, but we would -- and it is open for debate -- but we do respect the fact that there will be a subsequent opportunity to discuss in detail if the motion to reconsider prevails.

The Delegate, Mr. Joyce.

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DELEGATE JOYCE: Mr. Chairman, members of the committee, I would very much like to see this committee reconsider their action in connection with the amendment that was passed this morning, and if it's passed, I will have a message for you from the Anaconda Company, being that I'm a company man, and I would just like to have that opportunity to see whether or not, really, this Constitutional Convention wants to put the Anaconda Company out of business or not, and if they do, why, I think it should be done today.

CHAIRMAN FELT: Does the Delegate, Mr. Kamhoot, or the Delegate, Mr. Studer --

Delegate, Mr. Jacobsen.

DELEGATE JACOBSEN: I want to see the committee reconsider this. After all, we've used the gravel, we've used these things out of these pits and so on, for our benefit already. I think the good Lord put these things here for us to use and not later -- and to put and restore them or try to restore them into their natural way. We can't do that. So, I believe we must reconsider this to save our industry in this state, and our building industry is just as important because of the sand and gravel that comes out of these pits, and to restore them to their natural state is absolutely impossible. Thank you.

CHAIRMAN FELT: The Delegate, Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, I rise in support of

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the motion to reconsider. I would like to have someone tell me how you plan to put land back into production that maybe wasn't producing anything in the first place.

CHAIRMAN FELT: The Delegate, Mr. Kamhoot.

DELEGATE KAMHOOT: Yes, Mr. Chairman. I moved for reconsideration here mainly because, when this amendment was passed, it ran through in just about twenty seconds and I doubt if very many people here really understood what it was. I didn't. I thought it was merely a thumb print on the -- in the Constitution. It wouldn't hurt anything. But, after thinking a little and talking to a few knowledgeable people in this room, I find that we have certainly accepted something here that I don't believe the state of Montana could ever live with. If it put the Anaconda Company out of business, this would be pretty bad, as Mr. Joyce says. Maybe it would. I am sure that the courts would perhaps have to spend a lot of time and throw this thing out completely because I don't believe we could use it. Thank you, Mr. Chairman.

CHAIRMAN FELT: The Delegate, Mr. Dahood, for what purpose do you arise?

DELEGATE DAHOOD: Mr. Chairman, I support the motion to reconsider. I want to state that Tommy Joyce, I think in jest, said he is a company man. He is not, neither am I, but let's not divorce ourselves from some common sense. Let's think about it and reconsider it.

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CHAIRMAN FELT: The question now arises on the motion that the committee reconsider its action on section two. All in favor --

DELEGATES: Aye.

CHAIRMAN FELT: No -- Mr. Swanberg?

DELEGATE SWANBERG: I would ask for a roll call vote.

CHAIRMAN FELT: Are there sufficient seconds?

(Delegates stood)

CHAIRMAN FELT: There being sufficient seconds, there will be a roll call vote. Those in favor of the motion to reconsider will signify by voting Aye. Those opposed will vote No. Has every Delegate voted?

(No response)

CHAIRMAN FELT: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN FELT: If not, the Clerk will record the vote.

Aasheim	-	Aye	Ask	-	Aye
Anderson, J.	-	Aye	Babcock	-	Aye
Anderson, O.	-	Aye	Barnard	-	Nay
Arbanas	-	Nay	Bates	-	Aye
Arness	-	Absent	Belcher	-	Aye
Aronow	-	Aye	Berg	-	Absent
Artz	-	Aye	Berthelson	-	Aye

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1	Blaylock	-	Nay	Garlington	-	Aye
2	Blend	-	Nay	Graybill	-	Absent
3	Bowman	-	Aye	Gysler	-	Aye
4	Brazier	-	Aye	Habedank	-	Aye
5	Brown	-	Aye	Hanson, R. S.	-	Aye
6	Bugbee	-	Nay	Hanson, R.	-	Aye
7	Burkhardt	-	Aye	Harbaugh	-	Absent
8	Cain	-	Aye	Harlow	-	Nay
9	Campbell	-	Excused	Harper	-	Nay
10	Cate	-	Nay	Harrington	-	Absent
11	Champoux	-	Nay	Heliker	-	Nay
12	Choate	-	Aye	Holland	-	Absent
13	Conover	-	Aye	Jacobsen	-	Aye
14	Cross	-	Nay	James	-	Aye
15	Dahood	-	Aye	Johnson	-	Aye
16	Davis	-	Aye	Joyce	-	Aye
17	Delaney	-	Aye	Kamhoot	-	Aye
18	Driscoll	-	Aye	Kelleher	-	Absent
19	Drum	-	Aye	Leuthold	-	Aye
20	Eck	-	Aye	Loendorf	-	Aye
21	Erdmann	-	Aye	Lorello	-	Aye
22	Eskildsen	-	Absent	Mahoney	-	Nay
23	Etchart	-	Aye	Mansfield	-	Aye
24	Foster	-	Aye	Martin	-	Aye
25	Furlong	-	Aye	McCarvel	-	Aye

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McDonough	-	Aye	Schiltz	-	Nay
McKeon	-	Absent	Siderius	-	Nay
McNeil	-	Nay	Simon	-	Aye
Melvin	-	Aye	Skari	-	Aye
Monroe	-	Nay	Sparks	-	Aye
Murray	-	Aye	Speer	-	Aye
Noble	-	Aye	Studer	-	Aye
Nutting	-	Aye	Sullivan	-	Aye
Payne	-	Excused	Swanberg	-	Aye
Pemberton	-	Aye	Toole	-	Aye
Rebal	-	Aye	Van Buskirk	-	Aye
Reichert	-	Aye	Vermillion	-	Nay
Robinson	-	Aye	Wagner	-	Aye
Roeder	-	Nay	Ward	-	Aye
Rollins	-	Nay	Warden	-	Absent
Romney	-	Nay	Wilson	-	Aye
Rygg	-	Aye	Woodmansey	-	Nay
Scanlin	-	Nay	Chairman Felt	-	Aye

CLERK HANSON: Mr. Chairman, sixty-six Delegates voting Aye, twenty-two voting No.

CHAIRMAN FELT: The motion is carried. No action has been taken now on section two. Does any Delegate have a motion.

The Delegate, Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I move at this time

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that we strike from section two on page three, where it says reclamation, we strike the words, to a beneficial and productive use. Thank you, Mr. Chairman.

CHAIRMAN FELT: Is there any discussion?

The Delegate, Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I just wish to be sure that I had it written right in the first place. I had, to a beneficial or productive use. Is the word, and, in there or the word, or?

DELEGATES: And.

CHAIRMAN FELT: Will the Clerk read the amendment made by Mr. Kamhoot?

CLERK HANSON: Should I read the section first --

CHAIRMAN FELT: No, read the motion if you can.

CLERK HANSON: (Reading) Section two, reclamation -- I'll read the sentence as amended: All lands disturbed by the taking of natural resources must be reclaimed, striking the next words, to a beneficial and productive use. (End reading)

CHAIRMAN FELT: Now, is that the way you believe, Mr. Clerk, that the sentence -- that the paragraph would read after the amendment? Is that what you intended, Mr. Kamhoot?

DELEGATE KAMHOOT: Mr. Chairman, that is the way that it reads now and I moved to strike the words, to a beneficial and productive use.

CHAIRMAN FELT: Did you move to restore it back to

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the original condition of the committee report?

DELEGATE KAMHOOT: Mr. Chairman, I did not.

CHAIRMAN FELT: All right. Are you able to follow that, Mr. Clerk, now?

DELEGATE KAMHOOT: Mr. Chairman.

CHAIRMAN FELT: Read the sentence then, Mr. Clerk, as you believe it is intended to read.

CLERK HANSON: All lands disturbed by the taking of natural resources must be reclaimed, period.

CHAIRMAN FELT: Then pick up again -- where do we begin again?

CLERK HANSON: The legislature shall provide efficient -- effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources.

CHAIRMAN FELT: The Delegate, Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I rise in support of the proposed amendment of Delegate Kamhoot. I spoke, of course, this morning in favor of deleting the entire section and that lost. And then, as the subsequent debate got hotter and some people on the floor had the temerity to say that us people who were in favor of deleting the section were just knuckling under to the Anaconda Company, and so I have this to say. I now appear before you as an emissary of the Anaconda Company and I think, also, however, as an emissary of the people who elected me to this Constitutional Convention. I was able to get

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elected because I had the endorsement in both the primary and the general election of the AFL-CIO, and so I was elected. In the general election I spent no dollars. I did not campaign and, notwithstanding, I was elected, and I really believe that I come over here to represent the people who live in Silver Bow county, and my principal constituent, I take it, is the principal industry of Silver Bow county, and I do not believe the laboring people of Silver Bow county want to put the Anaconda Company out of business. But, if this Convention does, why, then that's another matter, and I don't believe that it makes any sense to write into the Constitution that the Anaconda Company must reclaim their land to a beneficial use when they take any copper out of the ground, because they can't do it, and they have advised me to tell this delegation that so far they have taken seven hundred and twenty-five million tons of material out of the Berkeley Pit in Butte alone, and if they are required by the Constitution of the state of Montana, before they can take any more material out of that ground, that they must fill up that pit, they cannot do it, they will not do it, and no power on earth can really force them to do it. It's completely impractical to expect that they can or that they should, and why write into the Constitution a requirement that before they can disturb the natural resources that they must do something that is absolutely impossible. Now, everybody recognizes what the purpose of this section was, is that

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the people of eastern Montana are afraid of the strip mining and they want those people not to be able to just despoil the land, and everybody agrees that that's reasonable, and the legislature has provided regulations and can in the future provide more stringent regulations to require them to reasonably reclaim the land, but to require in the Constitution that this land must necessarily and in all cases for everyone who disturbs the natural resources to put the natural resources back to a beneficial use just seems to me to be the height of absurdity. And, so, if I have lost my liberal credentials by advocating this, why, so be it. I can't sit here and allow -- or, I shouldn't say allow -- I can't sit here and be silent while the Constitution writes some nonsense into the Constitution, and I think I represent the people of my county, the rich and the poor alike, when I speak in favor of this amendment. Now, we have provided here in the amendment that the legislature will provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources, and I have no objection to that. I don't think the Anaconda Company does. I don't think the Butte miners' union do, but it seems to me that if we were afraid of bringing down the wrath of some people who were -- some offices, some politicians who were removed from the Constitution and you're still willing to take on the Anaconda Company and the Butte miners' union and all the people who deserve -- who make their living

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from the mining industry, and you still think you're going to pass the Constitution, well, I don't think so. And, I don't think it's the issue of what the company wants or that we're knuckling under to the company and all that baloney. It seems to me that it's an issue of being reasonable people. The Anaconda Company is doing their best, I think, -- maybe not -- maybe the legislature ought to make them do better to reclaim the land, but they simply cannot reclaim the mining property in Butte. When they take the -- they necessarily cannot reclaim the Berkeley Pit and the Berkeley Pit is the lifeblood of our community now, and hopefully will be for many years to come. And, it just seems to me that if the issue is that we want to make sure that the Anaconda Company doesn't continue to do business in the state, why, then we ought to reject this amendment, but I don't think anyone seriously wants to do that. So, I respectfully submit that the amendment be adopted. Thank you.

CHAIRMAN FELT: The Delegate, Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I don't think anyone will accuse me of coming here as a representative of the Anaconda Company. However, I must declare that I am a stockholder in the Anaconda Company, a small one to be sure. I think that maybe Mr. Joyce has a point and I think those words probably don't belong, and I therefore move a substitute motion that section two, as adopted by the committee this morning, be

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stricken in its entirety and the original report of the committee substituted therefor. Mr. Chairman, may I speak?

CHAIRMAN FELT: Yes, Mr. Heliker, you may speak on your motion.

DELEGATE HELIKER: The committee's proposal seems to me to be innocuous enough and yet at the same time to say enough to satisfy all of us here from all points of view. I don't know quite why we didn't accept it to begin with. It says, all lands disturbed by the taking of natural resources must be reclaimed to as good a condition or use -- or use, get the or -- as prior to the disturbance. The condition or use to which the land is to be reclaimed and the method of enforcement of the reclamation must be established by the legislature -- so we're leaving it to the legislature and, in its wisdom, I'm sure it will take into account all the sorts of problems that Mr. Joyce has mentioned and that have previously been mentioned before this committee. Thank you.

CHAIRMAN FELT: The Delegate, Mr. Studer.

DELEGATE STUDER: Mr. President, I think we are -- or, Mr. Felt.

CHAIRMAN FELT: Yes, Mr. Studer.

DELEGATE STUDER: I think we're getting back into the spot we were before we argued this for a long time this morning. When you put in this, in as good a condition or use, you're just about back to where this beneficial and productive use is

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in force again for the practical effect of it all. How are you going to put something back into as good a condition as it was when you've taken out what was in there and used it? You're getting into an impossible condition here. I don't want to go through this whole lingo that I had a while ago, but I'm sure that quite a few small industries couldn't live with it. How are you going to take out these little miners, loggers, and the like, that go out here and go to work? Their work is covered pretty well by refinishing their stuff into as close a condition as possible but to subscribe to as good a condition as it was is impossible. We're getting into a thing that just a lot of people aren't going to accept and I'd like to see the Constitution, as we make it up here, accepted and I think that if we pass something like this original deal, why, we'll be getting a lot of people to vote against it rather than for it. I object to it.

CHAIRMAN FELT: The Delegate, Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I'm glad this motion came up. Maybe -- I think we do need to have very careful wording. I'm concerned that we leave this without any words or directions to the legislature because some future legislature may be so oriented and be so anti-company that they might write in something that would really be detrimental to the company and to the economic situation in Butte. I take it that the company now feels that no future legislature ever will,

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but I can't really say that I'm guaranteed of that. Mr. Joyce says that we were talking this baloney when we opposed him. I'm not sure he meant that exactly. I think we have a right to speak on the other side. I think that the coal miners who are going to operate in the future in eastern Montana should be asked to do something in the way of reclamation, and Mr. Joyce says that he can see that. Now, what I can't understand is, why should the coal miners in eastern Montana in the future be required to do anything if copper miners in western Montana aren't. It seems to me that we can arrive at some kind of language that will say what we want. I think we need a reclamation section in here. We talked long and hard over water rights. I think land rights are just as important, and I believe that though we are tired at the end of a day, we can arrive at good words. I support Mr. Heliker's suggestion, having looked this over during the afternoon, having been a little bit worried about the words, beneficial and productive, feeling that we went too far, too soon, with those words. I believe a reversion to the original language of the committee would be the right thing to do at this time and I support his motion.

CHAIRMAN FELT: Members of the committee, for your general information, the motion before us would be, in effect, to adopt the original committee proposal. The previous motion by Mr. Kamhoot was to enact a section two on reclamation which was read to you. If you are not clear as to how that section

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would read under the Kamhoot proposal, we will have it read again. If you are -- and hearing nobody ask for it, we will not.

The Delegate, Mrs. Cross.

DELEGATE CROSS: Yes, Mr. Chairman. I have a comment I would like to make and then if Mr. Studer would yield, I'd like to have a -- ask him a question.

CHAIRMAN FELT: Will the Delegate, Mr. Studer, yield to a question?

DELEGATE STUDER: I sure will.

DELEGATE CROSS: Mr. Studer, your remarks really played on my heartstrings, so I wonder if you would accept this motion if I were to make it: All lands may be disturbed in any way by the taking of natural resources and left in any condition the disturber may desire.

DELEGATE STUDER: No, I don't -- I think you're being a little facetious there.

CHAIRMAN FELT: Does the Delegate, Mrs. Cross wish to speak on the motion before us?

DELEGATE CROSS: Mr. Chairman, I move that we adopt the original language of section two.

CHAIRMAN FELT: The motion has already been made, Mrs. Cross.

The Delegate, Mr. Davis.

DELEGATE DAVIS: Mr. Felt, Mr. Chairman, I move to

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amend Mr. Heliker's motion by placing a period after the word, reclaimed, deleting the words, to as good a condition or use as prior to the disturbance, and leaving the last sentence in. May I speak to the motion?

CHAIRMAN FELT: You may speak on your motion to amend the substitute motion.

DELEGATE DAVIS: Mr. Chairman, I have been very anxious to write the best Constitution that can be written. I couldn't care less who you want to identify me with, whether you want to identify me with the AFL, the CIO, the company, the union, or anyone else. My main concern is to try to make a Constitution that's constitutional. You can't lock words in. I can see how, by locking the words in -- productive and beneficial -- could be as harmful and as weakening as they are strengthening. You could make almost anything to say this is a beneficial use and the legislature could not set any standards. I mean, it's a sword that cuts both ways and both ways it cuts very sorely. The legislature is going to have to have the liberty as the next fifty years go by, if you get an environmental section -- if you get a Constitution that don't pass, you're not going to have any environmental sections and you've lost the whole ball of wax. And, I can see that you're going to have to leave some flexibility to take the situation as it changes from day to day, from generation to generation. So, I would then move the adoption of -- Mr. Heliker and I are

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really on the same side here except for a few words -- as amended.

CHAIRMAN FELT: Does the Delegate, Mr. Heliker, wish to speak on the amendment to his -- Mr. Heliker, do you wish to speak on the amendment to your substitute motion?

DELEGATE HELIKER: No, I don't.

CHAIRMAN FELT: The Delegate, Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, when I voted on this thing this morning, I thought the wording was, to a beneficial or productive use, and the word, and, makes a considerable difference than what is said. I have listened with considerable interest to what has been said and while I thought my position was very firm with the word, or, in it, I'm not so sure any more. But, I am disturbed about one other thing and I would make a further amendment and speak to it. I would --

CHAIRMAN FELT: You are making a further amendment?

DELEGATE HABEDANK: Yes.

CHAIRMAN FELT: All right, you can amend the amendment of Mr. Davis.

DELEGATE HABEDANK: I would insert after the words -- just one word is all I'm going to insert -- on line nineteen --

DELEGATE CHAMPOUX: Point of order.

CHAIRMAN FELT: Just a second, Mr. Habedank. A point of order has been raised. What is the point?

DELEGATE CHAMPOUX: I wonder if you can amend an

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amendment?

CHAIRMAN FELT: Yes, you may.

DELEGATE CHAMPOUX: All right.

DELEGATE HABEDANK: On line nineteen, after the word, lands, and I would not object to Style and Drafting changing it -- the word, hereafter. I am concerned that in this amendment, the way we have adopted it, we are making it mandatory upon the people of this state to go out and reclaim everything that has been disturbed in the past, and I think as a practical matter, we want some reasonable reclamation but I don't think we intend to force ourselves, when companies have been gone and there is no one who can be compelled to do this, to compel the state of Montana to reclaim everything in the future. And, therefore, I feel the word, hereafter, should be in there and if the word, reclaimed, is stopped where it is, we then have to depend on the second sentence of this section to implement what we mean.

CHAIRMAN FELT: The Delegate, Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, I wonder if Mr. Habedank realizes that by putting that word in there, you automatically eliminate the forty thousand acres in Dawson county which has just been leased. You also eliminate the eighty thousand acres in other three counties of eastern Montana which have also been leased for coal.

CHAIRMAN FELT: The Delegate, Mr. Aasheim.

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DELEGATE AASHEIM: I think we're acting like a bunch of juvenile neophytes. I move a recess.

CHAIRMAN FELT: A motion for recess -- would you like to place a time?

DELEGATE AASHEIM: Until tomorrow at nine o'clock.

CHAIRMAN FELT: Mr. Marshall, of course the motion is non-debatable. Do you wish to explain the parliamentary situation?

DELEGATE MURRAY: Well, the problem with recessing is, we don't do it overnight, so if that's the intent of his motion, it's out of order.

DELEGATE AASHEIM: Well, Mr. Chairman, I'll amend my motion to recess until eight o'clock.

CHAIRMAN FELT: The motion has been made that the committee -- for what purpose does the Delegate, Mr. Furlong, rise?

DELEGATE FURLONG: A point of parliamentary information, if I may.

CHAIRMAN FELT: You may ask.

DELEGATE FURLONG: Well, as I read the rule, I understood that when motions or amendments to motions were pending that those would actually be completed in spite of a --

CHAIRMAN FELT: I think you may be correct. Do you have a reference to the rule number?

DELEGATE FURLONG: No, but I'll accept Mr. Murray's

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answer for now.

CHAIRMAN FELT: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, the motion to recess is a motion which has priority and it can be made at any time. Some time back, a few days ago, we got into that situation and it was then determined -- or it was considered to be that you had to end whatever you were doing in order to make the motion but that is not the case. The rule does not read that way and I do not interpret it that way.

CHAIRMAN FELT: The motion to -- I was reading in Rule Sixty which, while it does not specifically apply to being in committee of the whole, may be applicable. It says that when a recess is taken while a question is -- no, I'm not sure that would apply.

Mr. Murray.

DELEGATE MURRAY: I don't think we need to read it. You're looking at the right thing but it doesn't apply to the point in question. The matter that we have to consider, I suppose, is whether we want to recess at this particular stage, knowing that we've got to come back and take up the matter of agriculture, and that's why the motion to recess was made previously by Mr. Eskildsen, because we do have other information that we would like to complete tonight. Of course, if the Convention, in its wisdom, decides that it does not wish to do so, why, they can drop another day behind. I submit that we really

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ought to proceed with our work. As long as we're stayed this long, we ought to continue working.

CHAIRMAN FELT: The motion before the committee is to recess until eight P.M. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No.

CHAIRMAN FELT: The motion is lost. We --

DELEGATE AASHEIM: Division.

CHAIRMAN FELT: Well, it was pretty firm, Mr. Aasheim and I think you're a little bit late, too, so we'll have to -- let's find, Mr. Clerk, exactly -- I believe we have a motion to amend to insert the word, hereafter, which is an amendment to the amendment of Mr. Davis. So, all we are really concerned with at the moment is the word, hereafter.

(Laughter)

CHAIRMAN FELT: The Delegate, Mr. Schiltz.

DELEGATE SCHILTZ: Will the gentleman, Mr. Habedank, yield to a question?

DELEGATE HABEDANK: I will.

DELEGATE SCHILTZ: Mr. Habedank, for the record, I did hear you say, and it concerns me, that you just wondered if the state of Montana were going to be doing all this reclaiming, or whatever it was. Is it your understanding that the

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reclamation called for in section two will be done by the stat or by the person who does the disturbing?

DELEGATE HABEDANK: I was in hopes -- Mr. Chairman, I was in hopes that the person who does the disturbing would do the reclaiming, but we have many acres of land that have been disturbed in Montana in the past which no one is around to reclaim, and this section is all-inclusive. And, while I am answering you, I would like to answer Mrs. Cross, when she says do I realize there have been eighty thousand acres leased and forty thousand acres leased. I do realize this, but they will be disturbed after the leasing and not before. The fact that they have been leased has nothing to do with their disturbing. That's why I'm talking about the word, hereafter, and why I think it is very important that we do not saddle the people of Montana with a reclamation job that they do not intend to assume.

CHAIRMAN FELT: The question arises on the motion to amend the amendment to insert the word, hereafter. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No.

CHAIRMAN FELT: The Noes have it. Gentlemen, we now have before us the amendment of Mr. Davis to the substitute motion of Mr. Heliker. The amendment would delete words from

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the section as it appears originally in your book. The words to be deleted commence on line twenty. Put a period after reclaim and delete the rest of the sentence. Is that clear?

The Delegate, Mr. Martin.

DELEGATE MARTIN: Mr. President, I wonder if I can offer an amendment to the amendment?

CHAIRMAN FELT: You can offer an amendment to an amendment, but you cannot offer a substitute motion, as we already have a substitute motion before us. The question now arises on the motion to amend. All in favor will signify by voting Aye.

DELEGATES: Roll call.

CHAIRMAN FELT: A roll call is requested. Mr. Harper, did you ask for recognition?

DELEGATE HARPER: I think Mr. Martin misunderstood you and thought you had ruled him out when in fact you ruled that an amendment to an amendment was possible.

CHAIRMAN FELT: Yes, I thought he had understood it but do you wish to offer an amendment to the amendment?

DELEGATE MARTIN: My amendment to the amendment would be to delete the section.

CHAIRMAN FELT: That is not an amendment to an amendment. Yes, that is what I thought. Mr. Davis' amendment is the question before us, to delete the -- well, it -- all right, Mr. Clerk, read it.

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CLERK HANSON: (Reading) Section Two, Reclamation: All lands disturbed by the taking of natural resources must be reclaimed. The condition or use to which the land is to be reclaimed and the method of enforcement of the reclamation must be established by the legislature. (End reading) Mr. President.

CHAIRMAN FELT: Yes, that's the condition in which the section would appear but the motion is a motion to amend by deleting the words, to as good a condition or use as prior to the disturbance.

The Delegate, Mr. Cate.

DELEGATE CATE: I would like to speak on the motion.

CHAIRMAN FELT: You may speak on the motion to amend.

DELEGATE CATE: I would support Mr. Davis' motion. I am as concerned as Mr. Joyce is about putting people out of work. Certainly, it was not my intention to put people out of work. I think the words, beneficial or productive use, are good words, that they should be in there, but Mr. Davis' amendment does permit the legislature to provide the standards at a later time and could well provide those same standards, so I think to get this thing off our shoulders and on the road, that I would urge the adoption of the section as amended by Mr. Davis.

CHAIRMAN FELT: A roll call has been requested on the motion to amend the substitute motion. We will use the voting machines. All in favor of the amendment will signify by voting

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Aye. Those opposed will vote No. Has every Delegate voted?

(No response)

CHAIRMAN FELT: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN FELT: If not, the Clerk will record the vote.

Aasheim	-	Aye	Brown	-	Aye
Anderson, J.	-	Aye	Bugbee	-	Aye
Anderson, O.	-	Nay	Burkhardt	-	Aye
Arbanas	-	Nay	Cain	-	Aye
Arness	-	Absent	Campbell	-	Excused
Aronow	-	Aye	Cate	-	Aye
Artz	-	Nay	Champoux	-	Nay
Ask	-	Aye	Choate	-	Aye
Babcock	-	Aye	Conover	-	Aye
Barnard	-	Aye	Cross	-	Nay
Bates	-	Absent	Dahood	-	Aye
Belcher	-	Aye	Davis	-	Aye
Berg	-	Absent	Delaney	-	Aye
Berthelson	-	Absent	Driscoll	-	Aye
Blaylock	-	Nay	Drum	-	Aye
Blend	-	Nay	Eck	-	Aye
Bowman	-	Aye	Erdmann	-	Aye
Brazier	-	Aye	Eskildsen	-	Absent

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1	Etchart	-	Aye	Mansfield	-	Aye
2	Foster	-	Aye	Martin	-	Nay
3	Furlong	-	Nay	McCarvel	-	Aye
4	Garlington	-	Aye	McDonough	-	Nay
5	Graybill	-	Absent	McKeon	-	Absent
6	Gysler	-	Aye	McNeil	-	Nay
7	Habedank	-	Nay	Melvin	-	Aye
8	Hanson, R. S.	-	Aye	Monroe	-	Nay
9	Hanson, R.	-	Aye	Murray	-	Aye
10	Harbaugh	-	Aye	Noble	-	Aye
11	Harlow	-	Aye	Nutting	-	Aye
12	Harper	-	Nay	Payne	-	Excused
13	Harrington	-	Absent	Pemberton	-	Aye
14	Heliker	-	Nay	Rebal	-	Aye
15	Holland	-	Absent	Reichert	-	Aye
16	Jacobsen	-	Aye	Robinson	-	Nay
17	James	-	Aye	Roeder	-	Nay
18	Johnson	-	Aye	Rollins	-	Nay
19	Joyce	-	Aye	Romney	-	Nay
20	Kamhoot	-	Aye	Rygg	-	Aye
21	Kelleher	-	Absent	Scanlin	-	Absent
22	Leuthold	-	Nay	Schiltz	-	Nay
23	Loendorf	-	Aye	Siderius	-	Nay
24	Lorello	-	Aye	Simon	-	Aye
25	Mahoney	-	Aye	Skari	-	Aye

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Sparks	-	Aye	Vermillion	-	Nay
Speer	-	Aye	Wagner	-	Aye
Studer	-	Aye	Ward	-	Aye
Sullivan	-	Aye	Warden	-	Aye
Swanberg	-	Aye	Wilson	-	Absent
Toole	-	Aye	Woodmansey	-	Aye
Van Buskirk	-	Aye	Chairman Felt	-	Aye

CLERK HANSON: Mr. Chairman, sixty-three Delegates voting Aye, twenty-three voting No.

CHAIRMAN FELT: The amendment is carried. The question would now arise on the motion of Delegate Heliker to adopt section two, as amended. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No.

CHAIRMAN FELT: The Ayes have it. The section has been adopted. Members of the committee, unless there are additional motions to reconsider some section, we are prepared to go to page thirteen. The Clerk will read the history and title of the --

CLERK HANSON: Mr. Martin is standing up.

CHAIRMAN FELT: Mr. Martin.

DELEGATE MARTIN: I move we reconsider.

CHAIRMAN FELT: Reconsider what?

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DELEGATE MARTIN: Section two.

DELEGATES: You can't.

CHAIRMAN FELT: We have had a motion to reconsider and it has been acted upon, so the motion is out of order.

The gentleman, Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I guess we go to the agricultural article. I am going to make the motions and Mr. Gysler is going to explain them and he will take them one at a time.

CHAIRMAN FELT: All right. The Clerk will read the history and title of the proposed article on agriculture.

CLERK HANSON: (Reading) Be it proposed by the Natural Resources and Agriculture Committee that there be a new article on agriculture to read as follows: Article, Agriculture. (End reading)

CHAIRMAN FELT: Is that the end, Mr. Clerk? The Clerk will read section one.

CLERK HANSON: (Reading) Section One, Department of Agriculture: The legislative assembly must provide for a department of agriculture and enact laws and provide appropriations to protect, enhance and develop all agriculture of the state. (End reading) Mr. Chairman, section one.

CHAIRMAN FELT: The Delegate, Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that when this committee does rise and report, after having had under consid-

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eration section one of the agriculture article of proposal number six, that it recommend the same be adopted. I defer you to Mr. Gysler.

CHAIRMAN FELT: The Delegate, Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I was hoping that we wouldn't hit this section at this time of the day, but I see we did. I will try to keep my comments short. Your committee believes that it is necessary to recognize the largest and most important industry in the state by retaining the constitutional provision for a department of agriculture and to require that the legislature provide appropriations and authorities to adequately protect, enhance and develop the agricultural industry of the state. The new section is intended to remove any reference to agriculture from article eighteen, section one of our present Constitution and to be the first section of a new article on agriculture. Now, this section has the endorsement of Mr. Smith, who is the governor's agricultural coordinator. He tells me, in a meeting in Great Falls I believe around a week ago, that this section has the endorsement of every agricultural group in the state of Montana. In talking with the reorganization people, who had originally recommended that we delete this, and explaining to them why we wanted this section, they agreed wholeheartedly with us. I have gobs of information and so on but the hour is late and unless someone asks me -- wants some of this information, I will defer from putting all

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of it out. I just want to remind you that this is very important to the agricultural people and one of the reasons it is, I also have figures on the declining farm population, and so, with saying no more, I move its adoption.

CHAIRMAN FELT: The Delegate, Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Gysler, may I ask you a question?

DELEGATE GYSLER: Yes.

DELEGATE BUGBEE: Is this meant to take the place of the twentieth department that is now left untaken by the executive reorganization?

DELEGATE GYSLER: Mrs. Bugbee, it is not because there is, under the present reorganization system, a department of agriculture. I might go a little further and explain that in the reorganization, the department of agriculture to some extent was kind of stripped because of the provisions of the present Constitution, which said there shall be a commissioner of agriculture who shall be appointed for a term of four years and so was locked into the office. We feel this is one of the reasons it was.

DELEGATE BUGBEE: Then I don't really understand because it says here, a department of agriculture. This does not mean it will come under the twenty departments of the executive then. Where will it go in the executive department -- excuse me?

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DELEGATE GYSLER: Mrs. Bugbee, it is at the present time one of the twenty and would continue to be one of the twenty. We are not creating a new one. We are just making sure that the department of agriculture will continue, that it will be a viable department of agriculture which will be able to meet the needs of the agricultural industry which is larger by far than the total of the three next largest industries in this state.

DELEGATE BUGBEE: I am not unsympathetic to the agricultural interests, but I am concerned about executive reorganization and it seems this is constitutionalizing on top of a constitutional amendment. Mr. Chairman, may I ask Mr. Joyce a question?

CHAIRMAN FELT: Does the gentleman, Mr. Joyce, yield to a question?

DELEGATE JOYCE: I yield.

DELEGATE BUGBEE: Mr. Joyce, would you clear up for me -- you must -- did your executive department take this up?

DELEGATE JOYCE: Well, I don't know as if we took it up, per se. We did re-enact, or we did recommend to the Convention that the current constitutional amendment, which is section seven of the Executive report, be re-enacted. I suspect that the matter could be handled, Mrs. Bugbee, if it were made clear that the legislature assembly must provide for a department of agriculture by saying within one of the twenty

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departments required by section seven of the executive report, or something like that.

DELEGATE BUGBEE: In other words, it's already provided for.

DELEGATE JOYCE: Yes, there already is a department of agriculture, as I understand it, and it's headed by this -- the commissioner or labor -- or, the commissioner of agriculture and it is one of the twenty departments that is currently operating.

DELEGATE BUGBEE: So, this is what we call --

CHAIRMAN FELT: Mrs. Bugbee --

DELEGATE BUGBEE: -- redundant, isn't it.

CHAIRMAN FELT: -- please, are you continuing to ask questions or do you wish to speak on the motion or what?

DELEGATE BUGBEE: Well, I would like to say to Mr. Gysler, I think it's unnecessary --

CHAIRMAN FELT: You may speak.

DELEGATE BUGBEE: -- I don't understand it.

CHAIRMAN FELT: The gentleman, Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I don't believe that Mrs. Bugbee understands that this does not change or create anything different from what we presently have in the Constitution. Our present Constitution, article eighteen, section one, says the legislative assembly shall provide for a department of agriculture. This proposal deletes -- deletes the

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reference to the commissioner as a four year term. But, this simply -- this suggested article here simply retains the constitutional department of agriculture which we have now and which the governor has had no trouble putting in as one of his twenty departments under reorganization.

CHAIRMAN FELT: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. McNeil, I do understand.

CHAIRMAN FELT: The Delegate, Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I would like to direct a question to Mr. Gysler.

CHAIRMAN FELT: Will Mr. Gysler yield to a question?

DELEGATE GYSLER: I yield.

DELEGATE ECK: Mr. Gysler, how about the present department of livestock, or whatever it's called? Is that to be included in the department of agriculture or is that to remain a separate department?

DELEGATE GYSLER: In this wording, we have not touched the department of livestock purposely. It was not set up originally as a constitutional office. It is set up as an office under the reorganization act. Really, what we are trying to do with this is to make sure we have one unified voice to speak out for a minority group in the state of Montana.

CHAIRMAN FELT: The motion is to adopt section one. Is there any further --

Mr. Kamhoot.

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DELEGATE KAMHOOT: Mr. Chairman, I am a member of the agricultural committee and I would like to point out to the Delegates here that agriculture produces six hundred and forty million dollars in the state of Montana. It's the largest industry there is and it's certainly entitled to a place in the Constitution. Thank you, Mr. Chairman.

CHAIRMAN FELT: The question now arises on the motion to adopt section --

The Delegate, Mrs. Bates.

DELEGATE BATES: Could we have a recorded vote on this, please?

CHAIRMAN FELT: A roll call vote has been requested. There are sufficient seconds. Those in favor of adopting section one will signify by voting Aye. Those opposed will vote No. Has every Delegate voted?

(No response)

CHAIRMAN FELT: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN FELT: The Clerk will record the vote.

Aasheim	-	Aye	Aronow	-	Aye
Anderson, J.	-	Aye	Artz	-	Aye
Anderson, O.	-	Aye	Ask	-	Aye
Arbanas	-	Aye	Babcock	-	Aye
Arness	-	Absent	Barnard	-	Aye

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1	Bates	-	Aye	Eskildsen	-	Absent
2	Belcher	-	Aye	Etchart	-	Aye
3	Berg	-	Aye	Foster	-	Aye
4	Berthelson	-	Aye	Furlong	-	Aye
5	Blaylock	-	Aye	Garlington	-	Aye
6	Blend	-	Aye	Graybill	-	Absent
7	Bowman	-	Nay	Gysler	-	Aye
8	Brazier	-	Aye	Habedank	-	Aye
9	Brown	-	Absent	Hanson, R. S.	-	Aye
10	Bugbee	-	Nay	Hanson, R.	-	Aye
11	Burkhardt	-	Aye	Harbaugh	-	Aye
12	Cain	-	Aye	Harlow	-	Aye
13	Campbell	-	Excused	Harper	-	Aye
14	Cate	-	Aye	Harrington	-	Absent
15	Champoux	-	Aye	Haliker	-	Aye
16	Choate	-	Absent	Holland	-	Absent
17	Conover	-	Aye	Jacobsen	-	Absent
18	Cross	-	Absent	James	-	Aye
19	Dahood	-	Absent	Johnson	-	Aye
20	Davis	-	Aye	Joyce	-	Aye
21	Delaney	-	Aye	Kamhoot	-	Aye
22	Driscoll	-	Aye	Kelleher	-	Absent
23	Drum	-	Aye	Leuthold	-	Aye
24	Eck	-	Aye	Loendorf	-	Absent
25	Erdmann	-	Aye	Lorello	-	Aye

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Mahoney	-	Aye	Rygg	-	Aye
Mansfield	-	Aye	Scanlin	-	Absent
Martin	-	Aye	Schiltz	-	Aye
McCarvel	-	Aye	Siderius	-	Aye
McDonough	-	Aye	Simon	-	Aye
McKeon	-	Absent	Skari	-	Aye
McNeil	-	Aye	Sparks	-	Absent
Melvin	-	Absent	Speer	-	Nay
Monroe	-	Aye	Studer	-	Aye
Murray	-	Aye	Sullivan	-	Aye
Noble	-	Aye	Swanberg	-	Aye
Nutting	-	Aye	Toole	-	Aye
Payne	-	Excused	Van Buskirk	-	Aye
Pemberton	-	Aye	Vermillion	-	Aye
Rebal	-	Aye	Wagner	-	Aye
Reichert	-	Aye	Ward	-	Aye
Robinson	-	Absent	Warden	-	Aye
Roeder	-	Nay	Wilson	-	Aye
Rollins	-	Aye	Woodmansey	-	Aye
Romney	-	Aye	Mr. Chairman	-	Aye

CLERK HANSON: Mr. Chairman, seventy-seven Delegates voting Aye, four voting No.

CHAIRMAN FELT: The motion is carried. The Clerk will read section two.

CLERK HANSON: (Reading) Section Two, Right to

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Special Levies: A special levy may be made on livestock and on agricultural commodities for the purpose of disease control and indemnification, predator control, livestock inspection and protection, agricultural commodity inspection and protection, livestock and agricultural commodity research and promotion. (End reading) Mr. Chairman, section two.

CHAIRMAN FELT: The Delegate, Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration section two of the agriculture article of proposal number six, it recommend the same be adopted.

CHAIRMAN FELT: The Delegate, Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman.

CHAIRMAN FELT: Mr. Gysler, before you proceed and in the hopes that there might be some saving of time, we do have a proposed amendment which I believe would be suitable for reading now and you perhaps might address your remarks to your original section and to the potential, at least, amendment. Would the Clerk read it?

CLERK HANSON: (Reading) Mr. Chairman, I move to amend section two of the agriculture article, page thirteen, line seventeen, by adding after the word, promotion, quote: revenue derived from such levies shall be used solely for the purposes levied. Signed, Aasheim. (End reading)

CHAIRMAN FELT: You may proceed, Mr. Gysler.

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DELEGATE GYSLER: Thank you, Mr. Chairman. This section is a revision of article twelve, section nine. Because of the excellent results of the livestock mill levy, your committee believes all of agriculture should benefit from this method of self-help taxation. However, your committee feels that setting the rate, as was previously done, is a legislative function and to be exercised in response to industry needs. Now, I would like to call the attention of the delegation that this section in its exact wording is also found in the Revenue and Finance report. It's their section fourteen. I spoke to Mr. Rygg, the chairman of that committee, and he said he thought it properly belonged in our committee and for us to handle it here, and if it passed they wouldn't take it up there. I would like to read you their comments: The proposed language retains the intent of section nine regarding livestock mill levies, and expands the permissible list of industries and uses for such statewide levy. The levies are not a pure earmark. They are more of a bookkeeping and accounting procedure. The provision, in explicit terms similar to present section nine, is no longer necessary. The uniformity clause has been removed from the proposed article, and the statewide property tax list has also been deleted. But the importance of agriculture to the Montana economy should not be underestimated; in fact, it should be emphasized. The committee also thought it should encourage taxpayers who are willing to bear the burden of a tax to improve

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the economic future of their industry. Also, I would like to read to you from Report Number Fifteen on taxation and finance as to why this is needed. On page one hundred and forty, at the bottom of the page: The Montana supreme court has ruled that the special livestock mill levy allowed in article twelve, section nine, could not be levied if it were not specifically authorized in the Constitution. The court said: Section nine of article twelve of the Constitution was expressly amended in 1910 whereby a special levy could be made upon livestock exclusively for certain purposes and without the amendments, such levy could not be made. It is for this reason that I move the adoption of this report. As to the proposed amendment by Mr. Aasheim, it is absolutely the intent of this article that the funds be used as is stated in the amendment. I don't really have -- if it is felt that this might clarify something for some groups, something like this, I don't suppose there's really any objection as this is the intent of our article to start with.

CHAIRMAN FELT: The Delegate, Mr. Rygg.

DELEGATE RYGG: Mr. Gysler -- Mr. Chairman, Mr. Gysler is correct. We did feel it would be just as well to have it in this article. I wonder now, though -- I hadn't noticed that heading. It says, right to special levies. Now, we didn't have that in ours and part of our explanation says: The committee also thought it should encourage taxpayers who

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are willing to bear the burden of a tax to improve economic future in their industry. My question is, by having that as a right to special levies, would that limit just those? I would like to direct the question to Mr. Schiltz.

CHAIRMAN FELT: Would the Delegate, Mr. Schiltz, yield to a question?

DELEGATE SCHILTZ: Yes.

DELEGATE RYGG: Would that make any effect in that?

DELEGATE SCHILTZ: We don't consider that the headnote is binding and if it doesn't fit the material inside the section, why, we rewrite the headnote, so we'll put it almost any way --

DELEGATE RYGG: As far as it isn't restrictive, we have no objection.

CHAIRMAN FELT: All right. The Delegate, Mr. Champoux.

DELEGATE CHAMPOUX: Would Mr. Gysler yield to a question, please?

CHAIRMAN FELT: Does Mr. Gysler yield?

DELEGATE GYSLER: Certainly.

DELEGATE CHAMPOUX: What is your meaning of the word, indemnification, in your section, please?

DELEGATE GYSLER: Well, wait until I find it again.

DELEGATE CHAMPOUX: It's line seventeen, page fifteen I'm looking at.

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DELEGATE GYSLER: This is a term that is used by the livestock people, I believe, with their -- could I direct the question to Mr. Conover? He says he knows that.

CHAIRMAN FELT: The Delegate, Mr. Conover.

DELEGATE CONOVER: Mr. Champoux, if I'm not mistaken, this is like a disease of -- in the cattle -- like if you had hoof and mouth or this other control over the state which could eliminate a whole herd of cattle -- or under quarantine. This is what this special phrase is put in there for.

CHAIRMAN FELT: Does the Delegate --

Mr. Barnard.

DELEGATE BARNARD: Perhaps I -- Mr. President, perhaps I could shed a little light on that question. Occasionally diseases of livestock get so serious that in the public interest it is necessary to destroy them, do away with them entirely, and this is an indemnity program for those mandatory cases where, in the public interest, it is necessary to destroy livestock.

CHAIRMAN FELT: The Delegate, Mr. Harlow.

DELEGATE HARLOW: I am disturbed now. If they mean by this that they will levy a special levy on livestock sufficient to pay for the livestock killed in a disease epidemic, if we had hoof and mouth disease, it might wipe out half the herds in Montana. The rest of us going to raise enough money to pay out for that half of herds? No, that's the wrong word,

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I think.

CHAIRMAN FELT: Mr. Ward.

DELEGATE WARD: Mr. Chairman, Delegates, maybe I can throw a little light on what this term means. Indemnification means that, from these levies in certain instances where disease control measures are necessary to eradicate a disease such as foot and mouth disease -- for instance, if we have this problem in the state, we will have to destroy how many cattle, I don't know. But, this is set up so those owners could pay for those cattle as a disease control measure. Now, this is the only way it can be done. A number of years ago when tuberculosis was very prevalent in livestock and cattle, the livestock sanitary board tested all the cattle. If they got a reactor the owner was paid either part or in whole for this animal in order to get rid of this disease. And, this is what it means. If there are any questions, I'll be more than glad to ask them -- answer them about the whole setup because I know it pretty well.

CHAIRMAN FELT: Does the Delegate, Mr. Aasheim, wish to speak on his amendment?

DELEGATE AASHEIM: Mr. Chairman, my amendment speaks for itself pretty much. I know you're getting hungry and tired and this is what we're trying to protect from is a hungry legislature. If they are short of funds they might see fit to delve into these funds that are not protected. And, another

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reason for the amendment is to give the people who are trying to pay their own way in an industry -- they have the confidence to put this money into this fund and they will then be assured that it will then be used for the purpose it is intended.

CHAIRMAN FELT: The Delegate, Mrs. Bugbee.

DELEGATE BUGBEE: I don't understand and I'd like to ask somebody a question. It seems to me that this section is so that the livestock industry can raise their own money in order to pay for their own indemnification. May I ask if someone would answer that question?

CHAIRMAN FELT: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, I'll attempt to answer it. This is true. The other taxpayers in Montana are not asked to contribute anything. This is strictly a mill levy on livestock taxable value. It has been working for these many years, since 1910. This livestock building over here was built with those funds, for instance. The livestock commission sanitary board has been operating under this for many, many years. Sometimes they need all the money they have collected. Sometimes they don't. Most of the time I don't think it all has been spent. Now, on the disease control, you know, the brucellosis program, for instance, has been rampant in Montana for many years, and it's about cleared up now. Now, this hasn't cost the taxpayers -- the other taxpayers in Montana -- any money. This has come just from the levy just on the live-

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stock, and this indemnity program, for instance, two years ago down in our country we got a scabies infection, or the fear of one I should say, and had to go through a lot of dipping program. When I was a small boy in the twenties they shipped up scabies from Texas in the cattle, and had to dip all the cattle in Montana, for goodness sake. It was a frightful expensive thing, but this was all paid for by the people in the livestock industry themselves. Does this answer your question?

CHAIRMAN FELT: The Delegate, Mrs. Bugbee.

DELEGATE BUGBEE: Yes, it answers my question. If I, my children and my family wanted to put money in a bank it would be our business, just as this is the business of the livestock people. Therefore, my only question is, really, why should this be constitutionalized? I'm afraid it was a mistake before. It may be a mistake again. Let the livestock people do what they want to do, but it seems to me this is the worst kind of constitutional writing and that we're really not sticking to what we're here for.

CHAIRMAN FELT: This was not a question but was a proper statement in debate. Mr. Gysler, did you wish to speak again?

DELEGATE GYSLER: Yes, I did. I would just like to reiterate, Mr. Chairman, what I read from page one hundred and forty, that the supreme court of the state of Montana said -- it said if you are going to do these things, you have to have

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it spelled out in the Constitution, and this is why we are doing it, and this is the supreme court of the state of Montana.

CHAIRMAN FELT: The question before us is the motion of Delegate Aasheim to add the words at the end of section two: Revenue derived from such levies shall be used solely for the purposes levied. All in favor of the motion to amend signify by saying Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN FELT: The Ayes have it. The question before us now is -- will Mr. Murray restate the motion?

DELEGATE MURRAY: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration section two of the agriculture article of the committee proposal number six, it recommend the same be adopted as amended.

CHAIRMAN FELT: The question now --

UNIDENTIFIED DELEGATE: May we have a roll call vote?

CHAIRMAN FELT: A roll call vote has been requested. There are sufficient seconds. The question before us is to adopt the section as amended. Those in favor of the motion will vote Aye. Those opposed will vote No. Has every Delegate voted?

(No response)

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CHAIRMAN FELT: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN FELT: If not, the Clerk will record the vote.

Aasheim	-	Aye	Burkhardt	-	Aye
Anderson, J.	-	Aye	Cain	-	Aye
Anderson, O.	-	Aye	Campbell	-	Excused
Arbanas	-	Aye	Cate	-	Aye
Arness	-	Absent	Champoux	-	Aye
Aronow	-	Aye	Choate	-	Absent
Artz	-	Aye	Conover	-	Aye
Ask	-	Aye	Cross	-	Absent
Babcock	-	Aye	Dahood	-	Absent
Barnard	-	Aye	Davis	-	Aye
Bates	-	Aye	Delaney	-	Aye
Belcher	-	Aye	Driscoll	-	Aye
Berg	-	Aye	Drum	-	Aye
Berthelson	-	Aye	Eck	-	Absent
Blaylock	-	Aye	Erdmann	-	Aye
Blend	-	Aye	Eskildsen	-	Absent
Bowman	-	Aye	Etchart	-	Aye
Brazier	-	Aye	Foster	-	Aye
Brown	-	Absent	Furlong	-	Aye
Bugbee	-	Nay	Garlington	-	Aye

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1	Graybill	-	Absent	McKeon	-	Absent
2	Gysler	-	Aye	McNeil	-	Aye
3	Habedank	-	Aye	Melvin	-	Aye
4	Hanson, R. S.	-	Aye	Monroe	-	Aye
5	Hanson, R.	-	Aye	Murray	-	Aye
6	Harbaugh	-	Aye	Noble	-	Aye
7	Harlow	-	Aye	Nutting	-	Aye
8	Harper	-	Aye	Payne	-	Excused
9	Harrington	-	Absent	Pemberton	-	Aye
10	Heliker	-	Aye	Rebal	-	Aye
11	Holland	-	Absent	Reichert	-	Aye
12	Jacobsen	-	Aye	Robinson	-	Aye
13	James	-	Aye	Roeder	-	Aye
14	Johnson	-	Aye	Rollins	-	Aye
15	Joyce	-	Aye	Romney	-	Aye
16	Kamhoot	-	Aye	Rygg	-	Absent
17	Kelleher	-	Absent	Scanlin	-	Absent
18	Leuthold	-	Aye	Schiltz	-	Aye
19	Loendorf	-	Absent	Siderius	-	Aye
20	Lorello	-	Absent	Simon	-	Aye
21	Mahoney	-	Aye	Skari	-	Aye
22	Mansfield	-	Aye	Sparks	-	Aye
23	Martin	-	Aye	Speer	-	Nay
24	McCarvel	-	Aye	Studer	-	Aye
25	McDonough	-	Aye	Sullivan	-	Aye

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Swanberg	-	Aye	Ward	-	Aye
Toole	-	Absent	Warden	-	Aye
Van Buskirk	-	Aye	Wilson	-	Aye
Vermillion	-	Aye	Woodmansey	-	Aye
Wagner	-	Aye	Chairman Felt	-	Aye

CLERK HANSON: Mr. Chairman, seventy-nine Delegates voting Aye, two voting No.

CHAIRMAN FELT: The motion is carried.

The Delegate, Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move the committee rise and finally report.

CHAIRMAN FELT: The question now arises on the motion that the committee rise and finally report. All in favor signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN FELT: The Ayes have it.

(Vice President Toole in Chair of Convention)

VICE PRESIDENT TOOLE: The Convention will be in order. The Convention will be in order.

CLERK HANSON: (Reading) March 2, 1972. Mr. President, we your Committee of the Whole, having had under con-

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sideration Report Number Six of the Committee on Natural Resources and Agriculture, recommend as follows:

VICE PRESIDENT TOOLE: Does the Convention wish the report read?

DELEGATES: No.

CLERK HANSON: That the committee rise and finally report. Signed, Felt, chairman.

VICE PRESIDENT TOOLE: Mr. Murray.

DELEGATE MURRAY: Mr. President, I move the Convention adopt the committee of the whole report and refer the committee proposal number six, containing the articles of natural resources and agriculture, to the Committee on Style and Drafting.

VICE PRESIDENT TOOLE: Mr. Berg.

DELEGATE BERG: I just simply rise to explain that when I voted on section -- subsection four of section two, being the only No vote, I thought I was voting against its inclusion. I find that everybody voted for deletion. I'm delighted.

(Laughter)

VICE PRESIDENT TOOLE: Thank you, Mr. Berg. You've heard the motion that the committee report be adopted and referred to Style and Drafting. All in favor, say Aye.

DELEGATES: Aye.

VICE PRESIDENT TOOLE: Opposed, No.

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DELEGATES: (No audible response)

VICE PRESIDENT TOOLE: Motion carried. We will move to Order of Business Number Eleven, committee announcements and notices.

(No response)

VICE PRESIDENT TOOLE: If there are none, I'll entertain a motion to adjourn.

DELEGATE MURRAY: Mr. Chairman -- Mr. Vice President, I move the Convention adjourn until the hour of nine A.M., March three, 1972.

VICE PRESIDENT TOOLE: You have heard the motion to adjourn. All in favor say Aye.

DELEGATES: Aye.

VICE PRESIDENT TOOLE: Opposed, No.

DELEGATES: No.

(Convention adjourned at 6:58 p.m.)

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MONTANA CONSTITUTIONAL CONVENTION

March 3, 1972 37th Convention Day Convention Hall

9:08 o'clock A.M. Helena, Montana

VICE PRESIDENT TOOLE: The Convention will come to order. Mr. Arbanas will give the Invoication. Please stand.

DELEGATE ARBANAS: Please join with me this morning in the song of creation from the book of Daniel. Bless the Lord, all you works of the Lord. You heavens, bless the Lord. All you waters above the heavens, bless the Lord. Sun and moon, bless the Lord. Praise and exalt Him above all forever. Stars of heaven, bless the Lord. Every shower and dew, bless the Lord. All you winds, bless the Lord. Praise and exalt Him above all forever. Mountains and hills, bless the Lord. Everything growing from the earth, bless the Lord. You springs, bless the Lord. Praise and exalt Him above all forever. All you beasts wild and tame, bless the Lord. You sons of men, bless the Lord. Praise and exalt Him above all forever, Amen.

VICE PRESIDENT TOOLE: The clerk will call the roll.

CLERK HANSON: Delegate Ask, Delegate Belcher, Delegate Berg, Delegate Berthelson, Delegate Blaylock, Delegate Brazier, Delegate Brown, Delegate Bugbee, Delegate Cross, Delegate Etchart, Delegate Harper, Delegate Heliker, Delegate Kelleher, Delegate Payne, Delegate Rygg, Delegate Speer, Delegate Kelleher, Delegate Payne, Delegate Speer. Mr. Vice Presi-

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dent, may Delegate Arness and Holland be excused? Delegate Payne.

VICE PRESIDENT TOOLE: Mrs. Pemberton.

DELEGATE PEMBERTON: Mr. President, Mrs. Payne is ill. Could she please be excused?

VICE PRESIDENT TOOLE: Yes, we'll arrange for that.

CLERK HANSON: Mrs. Payne is excused.

Aasheim	-	Present	Brown	-	Present
Anderson, J.	-	Present	Bugbee	-	Present
Anderson, O.	-	Present	Burkhardt	-	Present
Arbanas	-	Present	Cain	-	Present
Arness	-	Excused	Campbell	-	Present
Aronow	-	Present	Cate	-	Present
Artz	-	Present	Champoux	-	Present
Ask	-	Present	Choate	-	Present
Babcock	-	Present	Conover	-	Present
Barnard	-	Present	Cross	-	Present
Bates	-	Absent	Dahood	-	Present
Belcher	-	Present	Davis	-	Present
Berg	-	Present	Delaney	-	Present
Berthelson	-	Present	Driscoll	-	Present
Blaylock	-	Present	Drum	-	Present
Blend	-	Present	Eck	-	Present
Bowman	-	Present	Erdmann	-	Present
Brazier	-	Present	Eskildsen	-	Present

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1	Etchart	- Present		Mahoney	- Present
2	Felt	- Present		Mansfield	- Present
3	Foster	- Present		Martin	- Present
4	Furlong	- Present		McCarvel	- Present
5	Garlington	- Present		McDonough	- Present
6	Graybill	- Present		McKeon	- Present
7	Gysler	- Present		McNeil	- Present
8	Habedank	- Present		Melvin	- Present
9	Hanson, R. S.	- Present		Monroe	- Present
10	Hanson, R.	- Present		Murray	- Present
11	Harbaugh	- Present		Noble	- Present
12	Harlow	- Present		Nutting	- Present
13	Harper	- Present		Payne	- Excused
14	Harrington	- Present		Pemberton	- Present
15	Heliker	- Present		Rebal	- Present
16	Holland	- Excused		Reichert	- Present
17	Jacobsen	- Present		Robinson	- Present
18	James	- Present		Roeder	- Present
19	Johnson	- Present		Rollins	- Present
20	Joyce	- Present		Romney	- Present
21	Kamhoot	- Present		Rygg	- Present
22	Kelleher	- Absent		Scanlin	- Present
23	Leuthold	- Present		Schiltz	- Present
24	Loendorf	- Present		Siderius	- Present
25	Lorello	- Present		Simon	- Present

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Skari	-	Present	Van Buskirk	-	Present
Sparks	-	Present	Vermillion	-	Present
Speer	-	Present	Wagner	-	Present
Studer	-	Present	Ward	-	Present
Sullivan	-	Present	Warden	-	Present
Swanberg	-	Present	Wilson	-	Present
Toole	-	Absent	Woodmansey	-	Present

CLERK HANSON: Ninety-six Delegates present, three excused, one absent.

VICE PRESIDENT TOOLE: Reports of Standing Committees, Order of Business Number One?

CLERK HANSON: None.

VICE PRESIDENT TOOLE: I would like to make an announcement there. There will be a meeting of the Committee on Administration tomorrow morning at 8:00 o'clock in the Rules Committee room. That's Administration, tomorrow morning at 8:00 o'clock., in the Rules Committee room.

Mr. Dahood.

DELEGATE DAHOOD: The Bill of Rights Committee will meet tomorrow morning at 8:00 o'clock in the Bill of Rights Committee room.

VICE PRESIDENT TOOLE: Order of Business Number Two, Reports of Select Committees?

CLERK HANSON: None.

VICE PRESIDENT TOOLE: Number Three, Communications?

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CLERK HANSON: None.

VICE PRESIDENT TOOLE: Number Four?

CLERK HANSON: None, sir.

VICE PRESIDENT TOOLE: Five?

CLERK HANSON: None.

VICE PRESIDENT TOOLE: Six?

CLERK HANSON: None.

VICE PRESIDENT TOOLE: Number Seven, Motions and Resolutions?

CLERK HANSON: None, sir.

VICE PRESIDENT TOOLE: Number Eight, Unfinished Business?

Mr. Graybill.

DELEGATE GRAYBILL: Members of the Convention. It is the second Friday again, and I must report on the budget. You all have before you on your desks, copies of the budget. You should have. Mr. Gysler doesn't. Now, the first thing I want to mention is what I mentioned yesterday, and I'll just do it briefly. But, you understand that we have not adjusted the budget upward to include any federal funds yet, because the federal funds are not, in fact, in hand. However, Mr. Baucus spoke with me again this morning. They sent some more paperwork in yesterday, and everyone says everything's okay. We haven't got it back in writing, and we have not signed the contract yet with HUD. When we do that, which I anticipate

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will be done within the next two-week period, we will add that money back into the budget here, and it will help us especially on the public information end. At the moment, this budget does not reflect the HUD grant, because it isn't signed up for yet. On the expenses to date, the salaries are right on line. I might tell you that based on the nine-week convention, we have twenty point eight four percent of our time left, and that's just about how much we have left of the salaries. On staff wages, we only have eighteen percent left, but as you know, we're phasing out staff, and I think the next two-week period will clearly put us back into range on the staff, so we won't be in any trouble there either. You will recall that on employee benefits, one of the first things we did after the first two-week period, was add some money in there. Since we added that money in there, we've always been in good shape and we'll have no trouble there. Stationery and supplies, fortunately, I think we're ahead of the game. Obviously, we won't need to spend the other twelve hundred dollars on stationery. On flat printing, we may, in fact, spend it because it's a matter of how we budget that money. We are now getting bids and contracting -- or getting ready to contract -- on the voter information pamphlet. One of the things we want to try to do is try to get some color on that pamphlet and make it an attractive document. It may be that we'll use that flat printing money and move it into public information, and use it

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to make a little better document. In other words, we're a little ahead in the stationery and supplies area. Communications, it appears that we're ahead, but this may be deceptive. We have three thousand four hundred dollars unencumbered of our postage, but you must recall that we changed our method of sending the material out to most of the people that we designated. We're only making three big mailings, and there's a big mailing due with a lot of heavy material now, after the committee reports came out, and for the Style and Drafting reports. So, we really have two mailings left to come out of that postage. I think that perhaps, while we're not in real trouble, we're not actually ahead of the game in postage. Travels, no problem. Contracted services -- we're running pretty good on the printing. The printing is within our budgeted requirements. I had some checks run yesterday because of an inquiry. You understand, we own the print shop, and we sell printing to the rest of the Capitol. I can report that the salaries in the printing department so far for the two-week period -- or maybe for the month period -- were three thousand bucks. Paper was five hundred, but we made a profit of fourteen hundred dollars, because we get fifty percent of the printing we do for other state agencies. So, we ended up with only a twenty-one hundred dollar net figure there, because the highway and the attorney general and all have to buy a little printing once in a while, and we get half of it.

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Now, we are going to watch this, because it does involve labor costs, and perhaps the last week, or the last few days, we'll switch out of that mode. When we're through with printing our Style and Drafting reports, we'll probably switch out of that. But, the printing has worked out pretty well with the purchase of the print shop down there. The special expense -- the per diem -- is just about on line, and we're ahead of ourselves on consultants, so that's good at the moment. Commission expense is an item that we explained before. It hasn't changed any. What that amounts to is deficit for the commission that we paid out of our own pocket. There is, of course, some other deficit that nobody has paid yet. Public information -- we phased out the film project and, you remember, we then cut the five thousand that balanced the budget last time out of public information. As I say, if we get the federal grant, we'll be in good shape, because we will be able to add some of that money back into public information. All in all, I would say that it looks today -- and I hate to say this until we finish Revenue and Finance -- like we might be able to get through pretty handily, money wise. But, I still am going to try and keep you to the March 18th schedule. If we end up anytime around March 18th, we'll be in good shape. If we end up a week later, it will be touch and go. The difference is whether we have enough money to adequately pay for a brochure to the public, and to adequately educate. So, I am hoping that

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we can get through around the 18th, and if we do, we're in good shape. Are there any questions?

DELEGATE: (Inaudible -- speaker not turned on.)

DELEGATE GRAYBILL: When we sell the print shop back, we won't make a profit. What we really have done is -- you see, we're paying the salaries for everybody down there. We're splitting that fifty-fifty with the administration department, but we are also given half of the income from non-convention printing. The point is that we made fourteen hundred dollars while we spent three thousand for the labor. So, our labor really ended up costing us only half as much as it would have. Secondly, we are also doing it for cost. If we had done it the other way, the administration department would have made a little profit. Okay, thank you. Oh, Mrs. -- address the Chair and I'm sure he'll let you have a question.

DELEGATE BOWMAN: Mr. Chairman, can I ask Mr. Graybill a question?

VICE PRESIDENT TOOLE: Yes, Mr. Graybill will yield, I'm sure.

DELEGATE GRAYBILL: Yes.

DELEGATE BOWMAN: Mr. Graybill, is there an allocation to print the journal in this budget?

DELEGATE GRAYBILL: There is no allocation to print in the sense of printing the journal. The court reporter, of course, comes up with a typed copy. I did skip over that. We

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did some calculations yesterday, which indicate that we will probably be able to come out within the budget figures on court reporter if we end up around the 18th too. The court reporter is -- you know, we had to raise that to fifteen thousand in the last two weeks. The eight thousand there is accrued; it is not all paid out, but it's accrued. Assuming that we end up sometime about two weeks from now, we think we'll get by for the court reporter price. But, Mrs. Bowman, that does not include printing any copies. We have taken steps in the last two weeks, and we are having the print shop duplicate, I think, it's ten copies of the journal. We don't intend to duplicate a hundred, but we're duplicating ten. I don't want to have one get lost like it did in 1864, and then not have it. We're duplicating ten, which would give us enough so that we could hand a couple to a printer. But, this convention does not have any money, and never did have any anticipated, to print in the sense of making into a book, the journal. If the constitution passes, presumably the legislature would do that so that the matter would be available. If it didn't pass, probably nobody would bother to print it.

VICE PRESIDENT TOOLE: Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman. Leo, we find quite a congestion out here on this one watt line. Would it throw our budget too much out of balance, if we were to reintroduce two of those other watt lines?

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DELEGATE GRAYBILL: I will look into the fact. I'd rather not buy a whole watts line. That costs us about seven or eight hundred dollars, but I'll see if we can't get you another outlet for it. What we did is we eliminated one of our watts lines, which cut our watts cost in half, but we are still on the state's twenty-one line watts system. I will investigate whether or not we can get another outlet or two. Now, some of you know, and Mr. Toole and I have tried to let any of you who have emergency calls, or important calls, use our lines. There's one in our office, there's one in the hall here, and there's one in public information. You're certainly free to use them whenever you need to. I'll see if we can get another outlet, Mags, onto the twenty-one line state system. I'll talk about that with the phone company.

VICE PRESIDENT TOOLE: Any further questions about the budget? The Chair will entertain a motion that the budget be accepted.

Mr. Murray.

DELEGATE MURRAY: Mr. Vice President, I move that the convention accept and adopt the budget report of the president of the convention.

VICE PRESIDENT TOOLE: You've heard the motion. All in favor, say Aye.

DELEGATES: Aye.

VICE PRESIDENT TOOLE: Opposed, No.

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(No response)

VICE PRESIDENT TOOLE: Motion carried. Order of Business Number Nine, Special Orders?

CLERK HANSON: None.

VICE PRESIDENT TOOLE: Order of Business Number Ten, General Orders of the Day?

Mr. Graybill.

DELEGATE MURRAY: Mr. Vice President, I move that the convention resolve itself into Committee of the Whole for consideration of business under General Orders.

VICE PRESIDENT TOOLE: You've heard the motion. All in favor, say Aye.

DELEGATES: Aye.

VICE PRESIDENT TOOLE: Opposed, No.

(No response)

VICE PRESIDENT TOOLE: Motion carried.

(Committee of the Whole Chairmanship assumed by Mr. Graybill.)

CLERK HANSON: March 3, 1972. The following committee proposals are now on General Orders: Revenue and Finance, Bill of Rights, Education, Public Health, Local Government, General Government, Style and Drafting Report Number Three.

CHAIRMAN GRAYBILL: First of all, I'd like to say that I'm gratified to hear that you finished Natural Resources

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in such good shape last night. I think we had some interesting and thorough debates on important topics, and it does prove that we can get through and still have debates. It's my understanding that on Revenue and Finance, we'll start right at the top and go down, but before we do that, Mr. Rygg wants to make a statement. At this time, Sterling, why don't you take the floor and make your statement, and then we'll start down the line?

DELEGATE RYGG: Thank you, Mr. Chairman. I would like to give a little synopsis of our committee report, in case all of you haven't read it. We were given Articles Twelve, Thirteen, Twenty-one, which had a total of forty-two sections. You will note our proposal has only fourteen sections, so we have eliminated some sections, condensed some, and added some new ones. Article Twenty-one, consisting of eighteen sections, was condensed into our section thirteen. This is the trust and legacy fund, which really never has existed, and had not public school funds and other land grant funds been added in 1938, the whole article would have been useless. The Education Committee also had this article, and we have tried to incorporate their thinking in our majority report. We do have a minority report on this section. Article Thirteen had to do with public debt, and most of the six sections in this article, are now contained in our proposed sections one, eight and eleven. So, you can see that most of our work

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was done on section twelve. Now, the first sentence of section eleven became our new section one, and replaced section one (A) and section one. Section one (B), the Anti-diversion Amendment, with modification, became our proposed section six. Section two is covered in our proposed section five, and we have a minority report on this. I might say that we had only two minority reports, and had not Morris Driscoll, out of a courtesy, signed these two minority reports, we wouldn't have had any. So, the committee was fairly solid on its thinking. The gross proceeds tax, the old section three, was eliminated from this proposed article. Section four was also eliminated, and is partly covered by Local Government's proposal. Section five is covered in our proposed section four. Section six and seven are covered in our section two, the surrender clause. Section eight is guaranteed by our Federal Constitution so we eliminated it. Section nine is covered in our section fourteen and also in section three. Section ten is eliminated as it was covered in the new legislative article eighteen, I think it was, the other evening, and it came from Article Five, section five -- section thirty-four, I think it was. This is also partially covered in our proposed section twelve. Section eleven, the first sentence is now our proposed section one, and the uniformity clause was eliminated because it really has been a nebulous thing and is sort of covered in the Fourteenth Amendment. Section twelve is covered in our proposed section

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nine. Section thirteen is covered in the legislative article, section eighteen, and partly in our section twelve. Section fourteen is covered in our section twelve to a degree. Section fifteen and sixteen have been replaced with our proposed sections three and seven. Section seventeen was eliminated as we thought it was no longer needed. Section eighteen was also eliminated as we felt it was not needed. We heard testimony from some hundred and twenty some people. We didn't have many delegate proposals. We had a few; we considered them and used part of them. I think this committee has worked on this proposal with a very progressive spirit. We were told by a couple of people who gave testimony that all we should do is write the power to tax, put a no surrender clause in, and go on home. I suppose this would have been about equal to Connecticut's, Iowa's and a couple other states. But, we felt that even though the state has the inherent power to tax, we should provide some guidelines for our legislature. The committee felt that this document should be flexible enough so that future legislatures would not be restricted for many years to come. We do ask the convention to look at this proposal with this same farsightedness. In some of these sections, we feel we have made some giant strides for moving into the future. We ask you to consider them in this same light. While the committee is not in complete accord with everything in this proposal, the consensus is that we have a rather forward look-

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ing document that will meet the challenge of change in the future. We are asking this convention to meet that challenge. I would also take a little time and tell you a little bit about this committee, if I may. It's a pretty quiet bunch. You don't see them talking very much on the floor. I don't even know if you know who is on our committee. Geographically, we cover the state pretty well. We have a man from Conrad, Great Falls, Nashua, Glendive, Billings, and then we sneak into that invisible fence and pick someone out from Butte America. We go to Anaconda, and then we have two from Kalispell. As far as occupations are concerned, we have two school teachers -- one is a regular high school teacher with journalism and a few other degrees; one is a vo-tech teacher. We have two attorneys, one experienced, and one with the great exhuberance of youth. We have two businessmen, one affluent and one not. We have one farmer, one accountant, and one banker. I take the time of telling you this, because I want you to know that, really, in this group, I don't think you could feel that there was anyone in the whole group with a special interest. I want you to know that this group had, what they thought was, the good of Montana -- and I know you all did this -- but, really, I don't think there were any that were wrapped up in any one subject. We really are trying to put together a proposal which we think will be something the future of Montana needs. Now, I learned a long time ago

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that whenever I start doing anything -- If I'm going to do anything, I have to have on my side a banker, a tax man, and a lawyer. It happens that this committee did provide these things. However, the banker hasn't decided to back me on this. At the moment, I don't need a tax man. But, this morning, I'm going to need the counsel. So, I would tell the convention that I will probably try to handle the easy questions and as soon as we have something difficult, or of a technical nature, I will be calling on Mr. McDonough, or you can call on him, because, admittedly, he is the brains of our committee. So, with that, Mr. Chairman, I believe you can say the Mitchell gang may not be prepared, but they're ready.

CHAIRMAN GRAYBILL: Very well. Will the clerk please read the title of the proposal, and then section one?

CLERK HANSON: (Reading) Montana Constitutional Convention, Revenue and Finance Committee Proposal on Constitutional Revision Number Three. Date Reported, February 18, 1972, Sterling Rygg, Chairman, Morris Driscoll, Vice Chairman. Be it proposed by the Revenue and Finance Committee that there be a new article on revenue and finance to read as follows: Revenue and Finance, section one, Public Purpose: Taxes shall be levied by general laws for public purposes. Mr. Chairman, section one.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I move that when

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this committee does rise and report after having had under consideration section one of Proposal Seven, that it recommend the same be adopted. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Section one is a very simple and general statement, which provides the legislature the necessary leeway to impose taxes as they see fit. When we were discussing the article, of course we went through many constitutions, as all of you did, and we came up with one of the recommendations here from the revenue department, which read: The necessary revenue for the support and maintenance of the state, shall be provided by the legislative assembly, which shall levy taxes by general laws for public purposes only. As I mentioned, we did take out the entire section, and we put in the first sentence of section eleven, which is what is now our section one. Mr. Felt had a proposal in our committee and he met with our committee. He had the other half of this sentence in his. He had suggested that perhaps we should put the two of them in. I want to say that we have a high regard for Mr. Felt, and we did not just discard this without thinking about it. We considered it considerably. We felt that, really, the legislature is the branch which does raise the money, so we didn't think we needed more than that sentence to do it. We did think it was well, however, to emphasize two protection requirements. One, that taxes should

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be raised by general laws and only for public purposes. By doing what we have done, we do not force the legislature to place a tax on all property. We did remove the part that said all property. So, now the legislature can decide what they want to tax. We did remove the section which indicated income tax, but that has no bearing at all on what they can tax. Naturally, income tax is still in there and taxable. Much testimony was given to us that household goods are not a good tax base, but because the constitution has required it for the past eighty years, this property must be assessed and the taxes must be collected. Testimony also revealed to us that the cost of assessing and collecting this type of tax, in many cases, was just about as great as the amount of the tax. Furthermore, it was brought out that many taxpayers are reluctant to sign the appraiser's statement, which says this is a true statement, and they feel that maybe they are committing perjury when they do this. Now, by taking out the former section one, we have also eliminated the uniformity clause. It is, probably, a desirable thing, but under the present constitution, it has been unattainable. Various classes of property have been created in order to circumvent this provision. I think here would be the time to mention it because section seventeen of the present constitution defines property. We did delete it, because we didn't say that all property must be taxed. Our thinking now is that the legislature is

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now free to tax whatever form or class of property it so desires, and they can define it at the time they make the law. Again, I want to emphasize that in our proposal, we're not telling the legislature what to do, but we are simply removing the restrictions which, in the past, have made assessing of certain properties very difficult and unequal. I recommend the adoption of this article. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there discussion? Very well. Members of the Committee, you have before you on the recommendation of Mr. Rygg, that when this committee does arise and report after having had under consideration section one of the Revenue and Finance article proposal seven, that the same be recommended for adoption. All in favor, say Aye. Oh, just a moment.

Mr. Aasheim.

DELEGATE AASHEIM: Will Mr. Rygg yield to a question?

CHAIRMAN GRAYBILL: Mr. Rygg, will you yield?

DELEGATE RYGG: Yes.

DELEGATE AASHEIM: Mr. Rygg. Last night we put a special levy on agricultural products and livestock. It'll be impossible, under this section one, to do that by the legislature. Even if a group should ask to do so, would you say -- say, if the poultry growers would now ask for, or say the horticulturists would like to have a special levy for fruit trees, they couldn't do it because it wouldn't be a general law?

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DELEGATE RYGG: I think they could do it. I think the legislature could let them do the same as was done in that section which you passed last night. Mr. Chairman, maybe I don't understand the question.

DELEGATE AASHEIM: Taxes shall be levied by general laws. A tax on horticulture growers wouldn't be a general tax, would it? That would be a special tax.

DELEGATE RYGG: Yes, that would be a special tax.

DELEGATE AASHEIM: According to the constitution, then, it would be illegal?

DELEGATE RYGG: No.

CHAIRMAN GRAYBILL: Mr. Assheim, the Chair might be able to help you on that. It would seem to me that the language means that if you have a tax on a fruit tree or something, it has to be a tax that applies to all fruit trees anywhere in the state. You can have a tax on a special subject, but it has to be broadly based across the state. It can't be on one fellow's group of trees. Mr. Rygg nods in the affirmative, Mr. Aasheim. Now, Members of the Committee, you have before you for your consideration section one of the Revenue and Finance article upon Mr. Rygg's recommendation, that when this committee does arise and report that it recommend the same be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay.

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(No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read number two?

CLERK HANSON: (Reading) Section two, Surrender Clause: The power of taxation shall never be surrendered, suspended or contracted away. Mr. Chairman, section two.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I move that when this committee does arise and report after having had under consideration section two of Proposal Number Seven, it recommend the same be adopted. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: This is a short surrender clause. Most state constitutions have some sort of surrender clause. The newer ones have it much in this shortened form. Actually, our present constitution says about the same thing, but it takes up two sections, section six and section seven. Of course, the power of taxation is the most important power a governmental body possesses, and it is equally important that this power never be treated lightly or bargained away. This section does apply to all government units, not just state governments. It does not imply that the state cannot delegate the taxing authority by constitutional mandate or statutory law, to local governments. Due to the fact that local governments are merely subdivisions of the state government, this

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could not be considered relinquishing of taxing power. One reason for having this clause is to prevent the state from ever giving special privileges to any private enterprise. This section is not meant to prevent the state from exempting certain classes of property from taxation. I know that after the Romney hearing, Mr. Ask was concerned about the transfer of this power to local governments. So, our committee did give this a great deal of consideration before we did conclude that only this one sentence was necessary. Now, oddly enough, it seems that Illinois and Michigan were somehow able to get this same language in their constitutions. I believe this section should be included in our constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Is there discussion? Members of the Committee, you have before you on the recommendation of Mr. Rygg, that when this committee does arise and report after having under consideration section two of the Revenue and Finance proposal, that the same be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read number three?

CLERK HANSON: (Reading) Section three, Property

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Tax Administration: Property, which is to be taxed, shall be appraised, assessed and equalized by the state in the manner prescribed by law. Mr. Chairman, section three.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I move that when this committee does arise and report after having had under consideration section three of Proposal Number Seven, that it recommend the same be adopted. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: This section doesn't have many more words than the first two sections, but its implementation would open the door to a whole new concept of taxation. Now, the rational pretty much tells what could be done if this committee's thinking were brought to realization. However, it still would be the legislature's prerogative to decide how far reaching it wants the effects of the change to be. Now, in coming to writing a section like this, certainly it didn't come out of thin air. Much consideration was given to it. I suppose the Cerrano-Priest case and the subsequent findings in other states, brought out the thinking of this committee, although I would have to say that during the testimony, that there were many people who thought tax equalization was not all over Montana. It did appear to us that in the near future, Montana along with all the other states, will have to deal with the issue of equal education for its youth. The only way

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to accomplish this will be to have state wide financing of education. The first step in this process is to have a state wide system of taxation, which must start with a state wide system of appraising, assessing and equalizing. We feel that this section would enable the legislature to implement such a system. It is a duty of the legislative branch to define the tax administration system, and the duty of the executive branch to administer that system. Let us consider, for a moment, our present system of taxation. Currently, each county has its own administrating personnel. Now, if there were no need for state wide taxes, and if our educational system was not funded at all by property tax, this method would be adequate. However, because much of the educational quality is based on property tax, it is necessary that we change from an individual county system to a state wide system. It is true that, at the present time, the state board of equalization tries to insure the ratio of sales price to assessed valuation of real property. However, all counties do not comply with the state board's directives and, hence, equality is not reached. There is a problem of inequities within districts, as well as between counties. Many taxpayers do not complain so much about their own taxes, but the fact that their neighbor's taxes may be lower, they find very disturbing. It's impossible to have equitable taxation until state wide assessing and appraising has been achieved. I mentioned before the implications of the

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Cerrano-Priest case, will probably soon force Montana to use state wide financing for schools. Now, the committee is not against the board of equalization, or the county commissioners, or the assessors, as has been implied by many. In no way, can we visualize elimination of either the assessors or the county commissioners. Many counties now have appraisal boards and, yet, the assessor is busy running his office. The only difference here, if our proposal were to become a reality, would be that this appraising board would have to come from the state. Now, sections fifteen and sixteen of the present constitution do provide that the local board of equalization be comprised of the county commissioner. In our proposal, this one function could be eliminated from the county commissioners, but that would be all. It is true that this section would not call for a board of equalization in the constitution. However, it does not prevent the legislature from retaining this board and using them as a state appraisal board. We do, however, envision some problems with retaining it in its present form. Our thinking is that a tax administration system should be administered by the executive department. It is true that this board is appointed by the governor. It is also true that the governor does not control the board. The fact that they answer to nobody and have no checks, is indeed a problem. We feel they should be directly answerable to the governor, probably under the department of revenue, and if we are to retain

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them, they probably should be appointed from geographical districts. Now, there is an amendment on your desks that would delete our proposed section three, and retain present Articles Fifteen and Sixteen, or at least the basic functions of these sections. If this amendment passes, we feel it will be very difficult for the state to attain equality of taxation on a state wide basis, which will provide state wide financing for school systems. We realize it's hard to adjust to change. The committee feels that change in this area is necessary to meet the challenge of the future, and we do recommend that we base this challenge and adopt this section as a part of our new constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: I have an amendment for the clerk to read, if he would please.

CHAIRMAN GRAYBILL: Will the clerk please read Mr. Eskildsen's amendment?

CLERK HANSON: (Reading) Mr. Chairman. I move to amend section three, lines eleven through thirteen, page eleven of the Revenue and Finance Committee proposal, by deleting it in its entirety and inserting in lieu thereof the following new material: Section three: The board of county commissioners of each county shall constitute the county board of equalization. The duties of such board shall be to adjust and equalize the valuation of taxable property within their respective

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counties. The state board of equalization shall be composed of three members who shall be appointed by the governor, by and with the advice and consent of the senate. The members shall have overlapping six-years terms with each member holding office until his successor shall have been elected and qualified. The members shall be so selected that the board will not be composed of more than two persons who are affiliated with the same political party or organization. Provided further that each member shall devote his entire time to the duties of the office, and shall not serve on or under any committee of any political party or organization, or take part, either directly or indirectly, in any political campaign in the interests of any political party or organization or candidates for office. The state board of equalization shall increase, decrease or otherwise adjust, the assessed valuation of property established by the taxing jurisdiction to assure a fair, just and equitable valuation of all taxable property between the different classes of property, and between individual taxpayers. The state board of equalization shall annually assess the property of all railroads, telegraph, telephone, electric power and transmission lines, and all similar property, constituting a single and continuous property operated in more than one county in the state, and the same shall be apportioned to the counties, cities, towns, and school districts in which such property is located, in such proportion as will fairly repre-

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sent the valuation for assessment within each county, using commonly recognized methods of apportioning as shall be just and equitable, and shall also have such other powers, and perform such other duties relating to taxation as may be prescribed by law. Mr. Chairman. Signed by Eskildsen.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I so move. First, I would like to thank the committee for the hard work they've done, because they have worked hard on this.

CHAIRMAN GRAYBILL: There's a question, Mr. Eskildsen. The point is, Mr. Eskildsen has moved this as an amendment to section three of the Revenue and Finance Article, and the Chair allows the amendment.

Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. I would like to thank the committee for the hard work they've done. As we all know, each committee has put in much time and effort to come out with the proposals they thought best. It's just one of those things that I have a different feeling than what the committee does on what is best for the state of Montana. Because there was no way for us to compromise, which the committee tried, I talked to different committee members and we tried to find out a compromise, tried to reach one . It's just one of those basic differences. Because of that reason, I add this amendment. I would like to think that I could

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stand here and in two or three minutes, explain the whole tax program for the state of Montana. This is very complex, so I hope that you'll bear with me while I give you my reasons for submitting this amendment. Section three provides that property, which is to be taxed, shall be assessed, appraised and equalized by the state. This is in your section three. In the manner prescribed by law simply refers to the method that the state shall appraise, assess and equalize property. This, in no way, can be read to mean that the county assessors or county boards of equalization, or the state board of equalization, will ever again be involved in the assessment of property. The Revenue and Finance Committee has referred to the state level system, which simply supports my remarks, that the counties will not be involved unless in a subordinate, clerical position to a state administrator. Now, it has been said that section three doesn't change anything. I submit to you that no one can second-guess what any future legislature will do. If we delete section fifteen, and go with section three, I can assure you that in every session, there will be change. I can see this thing working real well. One session of cowpunchers will come in and have a great deal of influence over the legislature, and they'll come out of the legislature smelling like a rose. Here we go, up and down, and up and down in our tax program. You can bet the next session, the timber people or some other group, will be in. As they ap-

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proach the legislature, they will be in with their axes in their hands, and I can assure you that they will come out of the next session with all the pine cones. Again, let me repeat. You will start a process of fluctuation in equalizing programs that we now have, that will cause vibrations over the whole state. What has been accomplished in the last fifty years, but mostly in the last fifteen, will be the reclassification program would be lost. If you don't believe me, ask the committee if they can guarantee there will be no change in the assessment or equalization program. I can assure you that no one -- no one in this room -- can give you that assurance. Without continuity of a board of equalization, you will lose stability in our entire tax program. Are we going to have a whole program to replace a state board of equalization? Is there going to be one man appointed by the governor to serve at his pleasure? I will tell you this is going to be the biggest boondog that you've ever seen. If you pass section three, I can assure you that I will be the man who will be after the job. A few years of assessing railroads and public utilities, and satisfying farmers and timber people, and other special interests are just my dear old friends. I could retire in four years. That's all I'd need. As honest a man as I am, I couldn't help but be able to retire as it would just come to me that for sure. I wouldn't have to ask for it. You talk about letters coming over the transom, well, they would

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be coming under the door if you establish a tax department such as this. I strongly urge that rather than abolish the state board of equalization, that we put into the constitution that it shall continue to be the head of the department of revenue, as the statute now provides. Under executive reorganization, the legislature made sure that one man wasn't going to do it all. They left the board in as the head of the department. If we do this, it would lessen my desire to attempt to get the job because somebody is going to be watching. What is it that the state board of equalization and county commissioners are doing that is so bad? Whatever it is, can you assure me that this new streamlined and independent and efficient and whatever it is we are going to have, will do anything different, and will be able to do as good? If we are going to keep the same system, then we are going to have to appoint -- then are we going to have this appointee by the governor, a qualified appointment? When I talk about a person qualified, then we get into the twenty-five thousand dollar a year bracket. Is that all we are going to do? Add one more man to watch the three do their job? I submit to you that if there is anything wrong with the state board of equalization now, it could be corrected by a decent, appropriation so that they could do their job right. Now, while I'm on the subject, if you would want the ideal tax program, and the ideal person to run it, and to make sure that everybody was assessed equally,

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farmers, city dwellers, railroad, timber, etc., then the ideal person would be appointed by the governor, or the legislature, or picked by the judiciary or someplace, and he would be made a dictator, that could not be replaced or removed. His word would be final, and there would be no appeal. Then, my fellow delegates, you would have a situation where it would be possible that everyone would be taxed the same. I tell you, this isn't the American way, and this isn't my way. I believe in appointments and I believe in elections, but I believe that people should always have recourse. That is the reason we have democracy, and that is the reason our republic works, and that is the reason I don't want a dictator, and it is also the reason I want my amendment to section three. Thus, assuring the people of Montana that they will have a voice in electing their county commissioners and county assessors, and are able to appeal to their county boards, and to our state board of equalization and on into court, if need be. Our present system is local county rights, and if we go to section three, we will have abolished local rights, and we have done to the counties what the federal government is and has been doing to the state. We have created a state centralized system, leaving the counties no say whatever, in their property tax assessment. Our legislature has grappled with this problem. On January 16, 1963, a special committee was appointed to report to the thirty-eighth legislative assembly on the reclas-

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sification program. In regard to those counties that had failed to complete the program, they stated, and I quote:" A mere directive that the uncompleted work be done, with an authorization of the state board of equalization to demand that the county attorneys prosecute ouster proceedings against county officials, obviously is not adequate means of obtaining needed cooperation. That, in general, was the method contemplated by the 1957 law, end of quote. A dispute arose as to whether the state board had certain authority over county officials. A senate committee was appointed on February 5, 1965 for the purpose of studying the activities of the state board of equalization, and its relation with county commissioners association, and the county assessors association. This committee was chaired by Senator P. J. Gilfeather, while the county commissioners were represented through their attorney, Mr. William F. Crowley. The county assessors joined with the county commissioners and the state board was represented by William Douglas, attorney for the board. The net result of this meeting was signed agreement that the officials would cooperate with one another, and interchange ideas in open communication, in order that this program could be completed. That is the way of accomplishing fair, just, and equitable taxation, not having one may say, it shall be done. Who, at the state level, really understands the problems at the county level? It is one thing to be concerned about the rights of

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the individuals, but we should also be concerned about the rights of the various counties. I don't know how many of you know how your home is assessed. In assessing a home in town, the state board of equalization currently requires the assessed value to be forty percent of the market value. By statute, thirty percent of the assessed value equals taxable value. Simply multiply the mill levy times the taxable value and arrive at the amount of taxes to be paid. It has been asked why the state board of equalization is not requiring all counties to assess at market value, as required by statute. I asked the state board of equalization to prepare to the best of their ability, a report similar to the property tax shift report presented by the board to the Revenue and Finance Committee. I asked them to determine what percentage of market value the current assessed value is, and to these apply some hard tax figures on what the present taxes are, and what they would be if we were to suddenly assess all property at its full cash value. In preparing this report, they multiplied the present taxable value by two hundred mills, and determined that there would be one hundred ninety-three million dollars plus in taxes. To raise the same one hundred ninety-three million dollars plus, the two hundred mills can be lowered to sixty one point seven mills, if you assessed all at market value. But, what happens? Property tax on agricultural land state wide, would suddenly jump from twenty-one million to

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fifty-six million. If you'll look at this particular sheet, you will see it on there. Net proceeds of mines would drop from fifteen million to four million. There would be very little change in city and town lots state wide. It would decrease from fifty-six million to fifty-four million, but public utilities would suddenly drop from thirty million to eighteen million. Look who really benefits when you assess at one hundred percent of market value, as this committee is recommending. Is that what you want? Our present statutes requires property to be assessed at market value. To remove section fifteen from our constitution says, fair, just and equitable, means that we are being forced to assess property at market value. Is this fair, just and equitable as required by the constitution? Or are we going to have the state of Montana own all the land in the state because no one can afford to pay taxes on it? To really know exactly what is going to happen, it would be necessary that you compute these figures on an individual school district basis. I had the state board of equalization check on what would happen in some of our counties. Using the same items, agricultural land went from six hundred fifty-six thousand dollars in taxes up to one million, nine hundred eighty-nine thousand dollars in Yellowstone County. Public utilities decreased from two million, eight hundred thousand in taxes to two million, one hundred thousand. Solvent credits, held primarily

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by banks in Yellowstone County, decreased from three million and a half, to one point seven million dollars in taxes. Look at this. City and town lots and improvements now paying ten million, would increase to nearly twelve million dollars. Is this any way to bring in new industry? I have figures on some other counties. In Fallon County, the taxes on agricultural land will go up four times, from two hundred thousand to nine hundred thousand. Farm improvements from ninety-seven thousand to two hundred thirty-three thousand. Livestock from one hundred eighty to two hundred eighty-nine thousand. City and town lots from two hundred twenty thousand to three hundred thirty thousand. Net proceeds of mines will drop from one million, nine hundred eighty-nine thousand down to nine hundred fifty thousand. Public utilities from four hundred sixty down to four hundred thirty-two thousand. In Garfield County, agricultural land will go up from four hundred six thousand to seven hundred eighty-eight thousand dollars. Public utilities will go down from ninety-four thousand to thirty-four thousand. Is it wrong because the boards of county commissioners and the state board of equalization used an income approach -- and let me point out, those are the two key words in this whole thing. If I had to do this in ten words or less, I would merely say, you can't do it all by actual value. You have to consider the income approach. These are important words. In valuing agricultural lands, rather than valuing

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the land based upon what somebody is willing to pay for the land, even though he is not concerned about producing crops on this land. Our statutes require that agricultural land be classified according to use, and graded according to productivity capacity. This indicates to me, that the income from these lands was to be considered in assessing them as our constitution requires, fair, just and equitable. Sales prices do not always produce equality in all types of property. Very little land is sold in the state of Montana as an agricultural unit. Many sales are small acreage purchased to add to existing agriculture units. Many sales are speculative or tax write-offs. I am not aware of any state constitution that requires that all property be assessed at market value, but if we want the state of Montana to own all the land in the state, do as this committee wants, and assess all property, including lands, at market value. To use other than cost or sales price to determine market value of property, where such property is not being sold everyday, is not new to all of the members of this committee. As recent as 1967, a member of this committee represented owners of several separate commercial buildings in their appeals before the state board of equalization, in granting relief to the taxpayers stated as follows: The capitalization of net income from probable, future rent approach to value, indicates a fair market value, etc. Railroads and public utilities are therefore, not the

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only properties that you must look at to income. Commerical properties fall in this category. It is also fair, just and equitable to look to the earning ability of the land when assessing it, if the land is to be used for agriculture purposes. I quote from page nine of the report of the special committee on classification and appraisal to the house of representatives of the thirty-eight legislative assembly dated February 5, 1963. I quote, "The committee questioned whether market value alone is a satisfactory measure of value for all types of property, because some properties are not bought and sold in the market, and because as to some properties, the market value is artificially inflated. As to the case with farm and ranch land, it is therefore considered desirable to use the term, true value, instead of, full cash value, which connotes market value and to authorize the state board of equalization to consider other criteria and factors, such as productivity, rental value, capitalization of earnings, original cost, reproduction costs, depreciation, value of stocks and debts, inflation in deflated items, as well as sale or market price. In the valuation of properties of various kinds, it is also certainly necessary to authorize a state board of equalization to consult with and instruct, county officials in the use of such criteria and factors in the assessment of property. As stated before, what have the county boards or the state boards done that is so bad? Have any of you bothered

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to check to see what they have been doing before you ask to have them abolished? I checked and here are some more things you can think about. In 1954, a three year sales ratio study was conducted. In 1956, biannual report, page twelve, showed that the average assessed value of all property assessed at the county level, was approximately thirty percent of market value. This triggered the start of our reclassification and reappraisal program by our 1957 legislative assembly. Public utilities and railroads were being assessed at a far higher percentage of market value. In 1959, the state board of equalization attempted to equalize all county assessment and state assessment at forty percent. To do this, it was necessary to increase counties to forty percent, and to decrease the state assessed property to forty percent. Because the counties were not able to increase their local assessments rapidly enough, the state board had to slow down the reduction made to public utilties because of the severe upset to county valuations. Today, public utilities are still assessed at higher than forty percent, and local property is still assessed less than forty percent. But, the gap has been narrowed. Effectively, July 1st, 1957, it became necessary to reclassify all of our land in the entire state. This program was accomplished in about five years time. Since that time, most of our counties have upgraded their land classification program, with some of our counties completely rechecking all of the

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land classes to take into account the increase in production. In the past ten years, the average value per acre of nonirrigated land has been increased over fifty percent. Grazing land increased over eighteen percent. Wild hay land increased over fifty-six percent. All agricultural lands combined have increased over twenty-three percent due to the efforts of the state and county boards of equalization in carrying out the reclassification program. It was necessary that all buildings, and city and town lots, be appraised in a uniform method. This program took better than six years and a great deal of money to get completed. Actually, there were two counties that just completed this program and put it on their books two years ago. A lack of financing on both the state and county levels, has prevented the completion of these programs, and the updating of them as required by law. Presently, most of our counties are on a five-year program of reappraising all of their property, trying to put twenty percent on the books each year. What else is the state board doing? I have found that they have a total of seven appraisers working on the property tax field program. They requested, for three sessions in a row, a real estate transfer tax so that they could determine whether or not property is properly assessed. Because the legislature has refused to enact this program, the board of equalization has had to conduct its own sales ratio program and currently has completed three-fourths of the county.

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They have been spot-checking the appraisal record in the county to be certain that properties are assessed equitably, within and between counties.

CHAIRMAN GRAYBILL: Let's keep the talk down. If you want to talk, you'll have to leave the chamber. Go ahead, Mr. Eskildsen.

DELEGATE ESKILDSEN: I realize this isn't very interesting, but I can assure you one thing. Of all the things we've done up to this point, this is the part where you get down to the nitty-gritty as to who's going to pay and how much. The difference between this assembly here and all legislative assemblies, is that we don't have to worry about who's going to pay. All we have to do is write it up. In the legislature, their first question is, how much is it going to cost and who's going to pay for it? This is what I'm talking about here. I'm talking about the tax program of the state of Montana. Like I say, it isn't very interesting. Taxes aren't very interesting to talk about, but I'll assure you that they are important. And, the people that's going to pay them, they're the ones when you go back home and they look at this whole constitution, they're going to say, well, if I vote for this, how much will this cost me? And, we better have some answers for them. Not only for the boards and bureaus we included in this on a constitutional basis that we're going to have to have money appropriated for by the next legislative

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session, but also what's going to happen to our whole tax program and to the state board of equalization? It also shows whether the counties are found in the appraisal manual submitted by the state. The same kind of manuals are used nationally. This isn't just one that the state picked out. It's a standard manual that they use, but it fits Montana's condition. Of the seven appraisers, one man works almost entirely with land classification. One is a forester, recently hired to gather data and update formulas to use in arriving at proper values for timber land. One senior appraiser instructs county and staff appraisers in assessing more complex properties, revising cost schedules, depreciation schedules, etc. Four other well trained appraisers are involved in appraising improvements for counties, instructing and appraising county people in revising cost tables, and gathering sales ratio data. The state board of equalization assessed property that amounts to about twenty-five percent of the entire state taxable valuations. In 1970, there were sixty-five public utilities assessments made plus all of the net proceeds of mine assessments. This brings to me another subject. A member of your committee has questioned why the state board of equalization has reduced utility and railroad assessments. I told you one reason why. That should be exactly what this committee is asking for. You want all properties assessed at market value. I have already stated that public utilities are assessed at a

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higher percentage of value, and they were assessed at a higher percentage of value in 1954. That could be the reason the railroads and public utilities assessments should go down, but here's another reason why railroad assessments are going down. I found Milwaukee Railroad in 1968, had a profit of seven and one quarter million dollars. In 1969, a million dollars loss. Another eight million dollars lost in 1970, and they were headed for another loss in 1971. This makes a difference in the assessed value. A company that is losing this kind of money cannot be worth as much as it used to be when it was making a profit. This kind of property isn't sold everyday and you have to consider its income, as well as its cost. The stocks and bonds of the company determine what the property is worth. If the companies aren't making any money, down goes the market value of their stocks, as well as their ability to pay property tax. I found that in a study conducted by the state of Wyoming, dated January 8, 1969, that the state of Montana wasn't doing too bad a job in assessing railroads. The Union Pacific Railroad had an average value of eight hundred seventy-one million dollars by the thirteen states that are involved in this railroad. Montana valued them at nine hundred nine million dollars. Oregon at eighty-nine -- eight hundred eighty-nine million dollars. California at nine hundred million dollars. These two states, Oregon and California, have the largest appraisal staff of any of the

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western states. All thirteen of the states valued the entire Union Pacific Railroad Company about the same as Montana did. I also have another comparison of fourteen states that assessed the Burlington-Northern Railroad System last year. In 1971, average assessed value was ninety-six percent of the previous year's assessed value -- ninety-six point nine. In other words, the average of these states believed that the Burlington-Northern Railroad should be decreased three point one percent from the previous year. Montana assessed the Burlington-Northern at ninety-seven point four percent or a two point six percent decrease from the previous year. This proved to me that the Montana state board of equalization is not the only state that finds that railroad assessments should decline, even though Montana has not reduced them as much as the average of the other states. Our railroads, nation wide, have been losing propositions in their passenger service, and that is why the federal government has created amtracks to help offset these losses. The state board of equalization in determining the value and also the final figures on how much taxes should be paid by the railroads, use the annual report submitted by these companies, and an annual report submitted by the Interstate Commerce Commission. By the way, I have checked the two figures, and find them to be one and the same. These books are audited, and this is what I say. No auditor is going to purge himself falsifying the figures of any com-

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pany. Figures shown on these reports are used by the companies in filing their federal return. Look at some of the other properties assessed by the state board of equalization. The power and gas companies have increased from one hundred thirty-five and a half million to one hundred eighty-three million between 1960 and 1970. The telephone companies have more than doubled from thirty-five million to almost seventy-five million. Pipe line companies from nineteen million to thirty-eight million. Even though the railroads' values have decreased, the total utilities and railroads assessed by the state board of equalization have increased from three hundred eighty-six million to four hundred sixty-one million. So, all properties assessed by the state board of equalization have not decreased as has been stated. I submit that some of the growing companies should have had an increase in value and that they were increased by the state board of equalization. I think our county boards of equalization, and our state board of equalization are doing a good job. It's a very difficult job to try and equalize these properties. If you want a good job of equalization, you should first find out what the program is, what properties it is necessary to decrease, and what properties it is necessary to increase, before we try to abolish dedicated people who are only trying to do their job. I wonder if any member of this assembly realizes the amount of money being spent by the property tax department and the

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state board of equalization in trying to do this work that some people seem to be so dissatisfied with. During the first seven months of this fiscal year, the property tax department spent eighty-five thousand dollars. This amount is an average of twelve thousand, one hundred ninety dollars per month. Divided equally between fifty-six counties, the total expenditure of this department amounts to two hundred seventeen dollars. We're talking about some new boards, some new people, who's going to pay the bill? What are we going to get for two hundred seventeen dollars in each county? This new division couldn't even hire a clerk per month, per county for this amount. Even if we include a board member's salary, the total amount spent by property tax per county, would amount to two hundred forty dollars per month. That's all we're spending on this whole tax program in the state of Montana. In my way of thinking, this department has done a tremendous job on a very limited amount of money. If you really want a good job done in equalizing taxes, see to it that our present system is properly financed, so that they can do the job. Don't take the rights away from our people by establishing a system that nobody knows what it will cost to run, and nobody knows where the money will come from to run it, except out of the peoples' pocket. I am sorry that this took so long. It's rather boring, I know, to people who aren't interested too much in taxes, but I'll tell you, this is the most important

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section that you've had before you right up until now. I sure hope you give it some consideration. Thank you.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. McDonough.

DELEGATE McDONOUGH: Mr. President. It's somewhat difficult to answer the presentation in favor of this amendment, but I rise to oppose this amendment, and to bring back some clear facts as to what the majority proposal actually proposes to do. It doesn't propose to raise anybody's taxes. It doesn't change the ratios as to how the valuation of property is to be arrived at. It does, however, change the method of appraising and equalizing taxes in the state of Montana. There's nothing in the proposal that says that the state cannot designate the county assessor as their agent at the local level. There's nothing in the proposal that says the state cannot designate the board of county commissioners to assist at a local level. All it does is give the ultimate authority to appraise and equalize taxes in the state. The present sections fifteen and sixteen of the constitution gives the powers to the board of county commissioners and the state board of equalization, and the state board of equalization has only supervisory powers. That has been the big hangup. The state board was given these powers in 1921 and that's over fifty years ago. Reclassification came into effect fourteen or fifteen years ago, and there still is not equalization be-

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tween counties. That is all we want to do by this section is to give the legislature the power to equalize the property tax in Montana. Now, there's no limitation on the legislature relative to income tax. There's no limitation on the legislature relative to excise taxes. They can do what they want, and that's what we want to do by removing these restrictions on the valuation of the property tax. I won't go into the deficiencies in the present program. The state board has done, in a lot of cases, a very good job. By incorporating them into the constitution, in the wording of sections fifteen and sixteen, they can only go so far. There is farm land -- and we talk about equalization. There's farm land from two counties and they can be right across the fence. One section of farm land is appraised at ten dollars an acre and right across the fence, it's appraised at eight dollars an acre, or six dollars an acre. Now, that has to be equalized. Why talk about Cerrano vs. Priest so much? There is now ninety million dollars raised by property taxes to support education. If Cerrano vs. Priest is put into effect, the legislature in order to replace that ninety million, and if they wanted to replace that ninety million by property taxes, would actually have to levy approximately one hundred mills state wide on property. If the property isn't equalized, those counties which have purposely kept their assessments down, would receive a tremendous advantage from those counties who have

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fairly equalized their property between the individual taxpayers and between the other counties as promulgated by the state board. Under the present system, the only way the state board can make them equalize -- the state board cannot go down and tell them what their valuations will be on a fair valued basis. The state board has to bring them to court, have the hearings, bring them to court, and it'll take another ten or fifteen years to equalize property in the state of Montana, if it's done at all. That's why we're here. We're allowing the legislature to be able to make a state wide valuation of property. They're the ones, as Mr. Eskildsen said, that have to pay the bill. They are the ones that have to levy the taxes. Therefore, they are the ones that have that responsibility and they should also have the responsibility of setting this thing up so it will work. They don't have that authority or responsibility at this time. All we're doing is allowing them to do it. If they feel that the state board is doing a good job, they can retain them. If they don't, they can replace them with something else. The state board now, because they're a constitutional board and because it says they'll value property fairly, justly and equitably, and because that is in the constitution giving them powers, they say their interpretation of those three words are higher than what the legislature says they shall do. When they can say that, when they're appointed by the governor on those terms that they are,

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there's no way you can change it. You can elect the supreme court and throw them out if they make bad decisions is what is meant by fair, just and equitable. But, you can't change the state board, except through the governor on a staggered term of once every six years. What it does to the present constitution is take away from the people, the right to control the valuation of property. That's what we're removing. We are not changing a thing. We're not changing one dollar of valuation. But, we are removing that independent board from without the constitution and allow the property to be taxed much more equitably than it is right now.

CHAIRMAN GRAYBILL: Mr. Berthelson.

DELEGATE BERTHELSON: Mr. Chairman and fellow delegates. I rise to oppose this amendment. I am sure I don't need to remind the delegates to this convention that I am a man of few words. Now, I respect Mr. Eskildsen as a member of this delegation, and after his long dissertation, I am sure that each of you are thoroughly confused. Our committee heard literally reams of testimony. I would ask each of you now to take your report number seven on page eighteen and read with me lines four, five and six from the committee's comments and rational. Quote, the committee heard reams of testimony concerning the inadequate job of assessment and tax equalization in the state, end of quote. I should like to refer this committee to the Montana legislative council property taxation,

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and the Montana Property Classification Law of December of 1964. The report is number sixteen. I should like to quote from this report. I am not going to take time to read to you the list of members that served on that Montana legislative council. I'm going to hold the book up and refer you to page ten and I'm going to quote from the heavy black type in this legislative report. Knowing that I might be challenged if I read only part of this quotation, the summary that came from this Montana legislative council report, I am going to read it all. The first few sentences are probably not relevant to what I want to emphasize. Quote, As a matter of fact, our investigations show that land is assessed at about thirty percent of its full value; cattle at approximately forty-five percent; sheep at forty percent; horses and mules fifty-two percent; hogs eighteen per cent; back stock sixty-five percent, and other forms of property at varying percentages. In the face of the positive statutory enactment requirement assessment at full value, and in the face of instruction from the attorney general that the assessment must be made in that manner, this is what I emphasize that came out of this report. I'm going to supply the emphasis. The assess rs meet every year, resolve themselves into a sort of legislative assembly, and proceed to fix the values at which different species of property shall be assessed period. We shall later go into -- we shall later go more fully into the subject of classification

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of property, which we believe is authorized by the constitution. We simply desire, at this point, to call attention to the fact that we have a sort of classification of property in Montana, regulated not by the legislative assembly, but by the assessors and the state and county boards of equalization. We believe a classification should be made by the legislature, and transmit herewith a bill for that purpose. It is generally conceded in this state that the present system of taxation is a failure and results in unjust discrimination, and is utterly inadequate, end of quote. Ladies and gentlemen, and fellow delegates, let's vote with the committee on this problem.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman. I rise in opposition to Mr. Eskildsen's proposal, and in support of the majority proposal. I served on the Revenue and Finance Committee, and added probably more the exuberance of youth, as our chairman said, then the expertise of my fellow colleagues. I was impressed with certain facts and testimony before the committee. One is that we have a deplorable system of equalization and assessment in Montana. Of the reams of testimony which we heard concerning the equality of taxation among and between the counties, I can recall but one witness who testified that we had a fair and equal system between the counties. We were compelled to listen very strongly to the mandate of Cerrano vs. Priest. As you all know, Cerrano vs. Priest declared the

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present system of school financing in California to be unconstitutional. California's present system of school financing is based on a system similar to ours. We were also aware -- and there are probably more than four now -- cases throughout the state determining school financing at the local level to be unconstitutional. One of these cases was ruled on by the federal panel of three judges in Texas. These cases are all on their way to the U. S. Supreme Court, and I am certain, and all the members of the committee are certain, and all the witnesses that testified at our committee are certain that the U. S. Supreme Court is going to rule, definitively, that the present system of school financing is unconstitutional. What we have, as we all know, is a system whereby counties who are blessed with perhaps a net proceeds tax from the oil or copper industry, have the opportunity to lower their valuation, bring their mill levy up to par, and then when they don't have enough revenue, drain the general fund. This is a burden on all of us. What our committee proposes is a system of financing, whereby we all pay the same mill levy. The state, through our system, will do the assessing and appraising. We also heard testimony of the inadequacies of the state board of equalization. I would dare to say that the witnesses were almost unanimous in declaring that the state board of equalization had created a rather shabby system of appraisement and equalization. We heard testimony concerning the local assessors.

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Local assessment is perhaps the greatest evil we have in our system. It's closest to the people and, consequently, the local assessors have exerted on them great pressures for favoritism and things of this nature. This is something we must eliminate if we're to have a fair and equal tax system. As I mentioned before, the compelling case of Cerrano vs. Priest perhaps loomed heaviest on us when we were making our decision to open the doors for a system of state financing. I think this is something we cannot ignore because it's coming. I think the committee realized it was coming, and the committee left the door open. For this reason, I urge the adoption of the majority report. I would like to point out one other problem -- a problem I see in Mr. Eskildsen's amendment to our proposal. Mr. Eskildsen provides, and I am quoting, the state board of equalization shall annually assess the property of all railroads, telegraphs, telephones, electric power and transmission lines, and all similar property constituting a single and continuous property operated in more than one county in the state, and the same shall be apportioned to the counties, cities, towns and school districts in which the property is located. This is the way it is presently, and this has to be changed again if we are to fund our schools in a manner which will be mandated by the U. S. Supreme Court in conformance with what Cerrano vs. Priest stands for. Thank you very much, Mr. Chairman.

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CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman. One thing that has been bothering me -- I'm on the Revenue and Finance Committee. Yesterday morning on the Ham radio net, this committee was being chewed out royally that we were providing that all property was to be taxed at fair market value. Delegate Eskildsen has also indicated that. I got a telegram just now from Great Falls, Belt and Stockett saying the same thing. I want to get it in the record, loud and clear, that I am a strong advocate of taxing on productive value rather than on fair market value. I have been assured by all the members of the committee that section three does not make it mandatory that property be taxed at market value. The wording it says, is equalized. Mr. Eskildsen's amendment says equalized also. Therefore, I oppose the amendment. Thank you.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman and fellow delegates. I, too, am a member of the Tax and Revenue Committee. I do not pose as a tax expert. I do rise in opposition to Mr. Eskildsen's proposal. What it will actually do is lock into the constitution what we've had. It won't change it. I'm sure you're all aware -- I know you're all aware -- that the power to tax is an inherent power, inherent to the legislature. I think it is fundamental that the legislature must be able to devise and control and equalize and appraise the property

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in the state of Montana for the benefit of all Montanans. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman. This looks like a parade of the members of the Finance Committee. We've spent a good deal of time talking with Joe, and I feel a little bit guilty that he's being outnumbered at the front here, but I think he's pretty well able to take care of himself. I'd like to say a word about this committee. We're really pretty proud of the product that has come out of this committee. If you will look at the vote on this section in the back of our booklet, it was unanimous from the entire committee that this wording be used. There was no disagreement at all as to our vote. Now, our first conversations in our committee were not directed necessarily to taxes, not necessary to revenues, it was sort of a bull session of what contribution we could make to this convention and to the people of Montana that would have a beneficial effect on the citizens who are going to live in our state in the years ahead. Throughout our deliberations, I think this thought was encumbent on us. We were trying to look ahead at the problems of Montana of the future. We were all in agreement that we want to make Montana a place that our children want to live in and are able to live in. Much of the testimony we had was directed at the nonequalization or the inequality of the taxing system that we have here today.

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You've heard from Mr. Eskildsen, and I'm sure you recognize that many of his thoughts probably reflect the thinking of some of the people who are involved in the structure here now. In no way, did we want to be critical of these people. We think they're good public servants; they're working hard; they're striving to accomplish what they think is undoubtedly in the best interests of the people of the state of Montana, but the facts of the matter are these. From the testimony we received, we do not have true equality of taxation in the state right now. Now, what effect will true equality have on taxation? True equality may be defined perhaps as when the other fellow pays the taxes, and I don't pay any, we have true equality. This may be some of the thinking behind the statement that you heard today. But, our groups feels that if Montana is to go ahead, we are going to have to have equalization in the eyes of those who would like to stay in Montana and invest money, or those who would like to come to Montana and invest money, creating more jobs for our young people. It takes about a twenty thousand dollar investment to furnish a job for someone. In the state of Montana, we've got an awful lot of nice people, and we've got an awful lot of nice country. We've got room for more of our young people to stay here if we're able to create employment opportunities for these young people. It is in this direction that our board was pointed. Our feeling -- We express a confidence in the

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legislature to make the determination of how the people of the future are going to be taxed. In my mind, the legislature acts somewhat as a board of directors in a corporation. For a corporation to say that we are going to appoint a board of directors and charge them with certain responsibilities that are going to be the same responsibilities fifty, or a hundred, or two hundred years from now, just doesn't look like it's reasonable. The legislature is responsive to the people. The legislature is the people. As times change, as attitudes change, as our economy changes, the legislature can respond to these changes. If we lock wording into the constitution, it may make it very difficult for our state, which we all are so much in love with, to grow and develop like we hope that it will be able to do in the future years. The committee is not recommending that we fire anybody. We're not talking about any job losses, and we're not talking about people really losing their responsibilities. What we're doing is we're taking out of the constitution, and putting into the hands of the legislature, and as Mr. McDonough explained quite clearly, I think, but I would like to reemphasize, it's very, very likely that the legislature will use much the same structure that we have now. The tax assessors may have much the same responsibility in the future. Assessors, as you all know, are the guys that count the cows. They're the ones that look at the land and determine what the value is. The appraising of

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the property is the area where there is some question. An assessor finds it, locates it, but he may look at the appraisal process a little differently than someone else. Our feeling was, and this was again derived from the testimony we heard, that the appraising of Montana property should be equalized because an acre of land that produces so much -- again, we are not arguing about the method of taxation because that is already in the hands of the legislature. It's statutory. The classification of properties is statutory. The things you heard this morning of farm lands which now pay twenty-one million and may pay fifty-six million, this is away from our intent. The legislature at the present time, are the people who determine the classification of these properties. Our feeling was that if we can arrive at a fair, equitable appraisal system for the state of Montana, the people of Montana are going to benefit because we are going to have an open and a growing economy environment. I'd like to quote this morning. I'm not a great reader of the Missoulian and I'm not really a great green button puncher, as most of you know. There's kind of an interesting editorial this morning that may bear reading at this time. Toward the end, it says: Today the convention -- referring to our convention -- is scheduled to take up the Revenue and Finance Committee proposal. It is a fine document containing both progressive ideas and essential compromises. Yet, it is a good bet that the convention will

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surrender to the highway lobby on the highway trust fund issue, which has already compromised in the committee proposal. It might knock out the tax appeal board, set up separate tax appeals for the state agencies, which set revenue policies and procedures. It might reinstitute some of the archaic and limiting revenue provisions of the old constitution, which the committee proposes to be deleted. I ask you, as delegates, to think not of your friends who are now serving in positions here in the Capitol. Think in terms of what is in the best interest of your children and the generation to come. If we are influenced by the status quo, and are locked into the procedures of committee and taxation principles that we have today, we may really be limiting the growth of our great state in the years to come. I submit, and I implore, this delegation to support the committee report. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: The question is on Mr. Eskildsen's amendment. Is there further discussion?

Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman. I rise in opposition to Mr. Eskildsen's amendment. The reason why I rise has already been stated. I wish to emphasize, for the convention, the unanimity of the committee on this proposal. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Anderson.

DELEGATE JOHN ANDERSON: Mr. President, members of

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the assembly, I rise in support of Mr. Eskildsen's amendment. I think all of us are aware that Montana is among the highest property taxes in the nation. I think it is one that is of great concern. I know I have had several calls in regard to this very matter. I have received a telegram here just now from the board of county commissioners of Beaverhead County. I would like to read it to you: We, as the board of county commissioners of Beaverhead County, would like to support you in your efforts to retain section fifteen, Article Twelve of the new constitution. Also, please reinstate section five, six of Article Thirteen (balance of telegram text completely nondiscernible.) One of the things that concerns me most about this, and I think is one that we should consider very seriously. I think we should have something in our constitution so that we have some board of equalization especially within our counties. I think all of us can recognize that property taxes were mainly thought of to take as a source of revenue for local finances, such as county and municipal uses and our local schools. But, we know that we also pay property taxes for state purposes, and I think rightly so up to a point, but I think it's just as basic today as it has ever been, that we should consider private property taxes mostly for local revenue to support our local government. So, I especially think that we should have something in the constitution that will assure us that we have some sort of a board

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locally to look after our tax equalization. Thank you.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President and fellow delegates. As chairman of the Education Committee, I would be remiss if I didn't, at this time, stand up and make some comments. The Education Committee studied this quite thoroughly. I'm sure I speak for the committee when I say this. We feel that we have to be flexible for the future. My good friend, Joe Eskildsen, I'm sorry, does not represent that view in my view. The superintendent of public instruction, Mike Billings, has spent about a year developing a report -- I don't know if you've seen it, but I'm sure you've read about it in the paper -- which definitely shows there are marked inequities throughout this state, between the different school districts. Part of this is due to the varied assessment values that have been established. I will say this on this floor without any doubt, that if someone was to bring a Cerrano type case to the Supreme Court of Montana, he would win that case. The proof is there. The majority report, in my view, looks to the future. It is flexible enough to take care of all possibilities. Therefore, I support the majority report and I'm against Mr. Eskildsen's amendment.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I come from district six. I have five complete counties in district six. I have

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letters here from every one of those board of commissioners and assessors, supporting Joe Eskildsen's minority report here. I have telegrams all over my desk. It's full of them. I have one here with thirteen names on it from people in eastern Montana. I can foresee that if this would take place, that farm land is put on a market value as it is inflated today, the day could come if we went through another drouth period, when each one of these counties are going to have to own every bit of this farm land, because they certainly could not pay taxes on the basis of an inflated market value. It must be on a production sliding scale of some kind. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Speer.

DELEGATE SPEER: I want to speak in support of the minority section three stating the need for state centralization of the assessment function. There have been ample studies in Montana and by the federal government, to prove that our present system results in inequity. We've already heard of the one study of the legislative council. There was one in 1960, which pointed out the same inequity. We had the reclassification and reappraisal program in 1957, which was supposed to remedy this condition. Not only did a house committee of the Montana legislature say that this had accomplished nothing. There was still the same underassessment and inequity in assessment in Montana, and this was also verified by

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the federal bureau of the census. We have had three reports of the bureau of the census on government which say that in Montana, there is greater inequity in the assessment between counties than in all but two of the states in the United States. The only two that have greater inequities between counties in the United States, are New Hampshire and Texas. That was said in the 1967 census of governments. The only way to correct this inequity of assessments between counties, is through state centralization of assessment. That is the reason that I support it. There have been two commissioners of the state board of equalization who have said that this board should be removed from the state constitution. I won't go into the results of the inequities. They have already been pointed out, I think, in the case of the school distribution. Counties can underassess in order to get more of the school foundation program. They can overassess in order to increase salaries of local officials, and there are other evils that result from this inequity and leaving the assessment in the local area.

CHAIRMAN GRAYBILL: Mr. Lorello.

DELEGATE LORELLO: Mr. Chairman. I'd like to ask a question of Mr. McDonough please.

CHAIRMAN GRAYBILL: Mr. McDonough, will you yield?

DELEGATE McDONOUGH: Yes, Mr. President.

DELEGATE LORELLO: Mr. McDonough, I'm concerned about this market value-productive value. I think I understand

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what they mean. Let's get to the word, equalize. Let's suppose that today we build a home in Billings costing twenty-five thousand dollars. Let's then build another home in Phillipsburg, Montana, and it, too, will cost twenty-five thousand dollars. Would you tell me what the taxes would be on these two homes? Just what would they be at the end of the year? How would you equalize these things, between the two cities?

DELEGATE McDONOUGH: That's what we do by this proposal. We don't tell anybody how they're going to equalize these two taxes between these two counties. We leave that to the legislature. One thing I'd like to make clear on that here, is that we don't say anything has to be equalized in any one manner. We leave that to the legislature and the body that they set up, whatever it may be. We don't say that land has to be taxed on market value. Incidentally, houses are -- residential houses are in Montana. We don't say that other land can't be taxed on productive value. There's nothing in the present law that says that you can't tax land on productive value. And, there's nothing in what we're proposing that you can't tax it on productive value. This thing about how you arrive at valuation, we're leaving that wide open because how to arrive at valuation of any piece of property is very complex. Market value is just one of the things you take into consideration. Now, on the difference between the houses. Presently now, houses are started off with that class of

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property does start off with market value. If the house is only worth -- You build a house in Phillipsburg, but there's not too much market for a house, and you pay twenty-five thousand dollars for it. It might only be worth twenty. If the legislature says that houses will be on market value, then that house will be twenty in Phillipsburg and twenty-five in Billings, and they'll apply the local mill levy to it. I don't know what the legislature is going to do. They might actually go to a rental value instead of a market value as to figure out the cost of houses. They should be allowed that flexibility to do that. Does that answer your question, Mr. Lorello?

DELEGATE LORELLO: Yes but --

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I think maybe first I should state my bias in this as a former lobbyist for the League of Women Voters. Our very oldest support position in Montana politics, was one supporting a more equitable administration of the property tax. It was also always a very frustrating position, because there was very little you could do about it. We did work with the board of equalization and I don't want to cast any aspersions on them. I think they were really trying to do the job, but they were also aware that they weren't really able to equalize taxation in Montana. We have talked about the importance of equalizing taxation in

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the event that we get into state wide support of schools. I believe, also, that nonuniformity of assessment is a violation of the equal protection clause of the United States Constitution, which means that whether we're dealing with schools or anything else, we are really, by maintaining a system that is not equal, violating the U. S. Constitution. I think eventually we're going to run into trouble with it. In our work with the League, we've also gone into the problems on the county level. I just saw one of our old friends walk into the balcony up here, and recall his telling stories of when he was a foxy old county commissioner. We get the idea of reassessment and I would guess that he wasn't the only county commissioner who saw to it that their assessment rates were cut something like thirty-five percent before the assessors came through. They came through and looked at the books and said, well, these are just a little low, and they raised them something like between eighteen and twenty percent. In a sense, that's his duty, serving the people in his county. But, assessment, if it's going to be looked at as a state wide function, can't really function well with people trying to gain advantage for their own people at the local level. I think that that's the system that we're up against. I was delighted when I saw most of this committee report. I can't say I'm happy with the entire thing, but I think for the most part, they've done a splendid job. I think they've left the

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flexibility that we are going to require to meet our needs in Montana. Thank you.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: I am real concerned. Mr. Chairman, I would like to ask my real good friend, Mr. Drum, if he'll yield to a question.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: I certainly will, Mr. Conover.

DELEGATE CONOVER: Dave, in all your deliberations on this, as you know -- The way I stand, I have land in three counties and I am disturbed about this. I know it's not equal. I'll have to agree with you. But, is there any way that you can prove to me that we will have a county board of appeal or appraisal board within our counties, that this will not be taken away from us? I can maybe see it go with you, but if we lose this, then I am real afraid.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman, do you want a speech or an answer?

DELEGATE CONOVER: I want an answer.

DELEGATE DRUM: I, too, have land in three or four counties. The answer I would give is this. If we have true equalization, it could mean more taxes for some people but it could mean less taxes for others. If you base the approach on equality, fair treatment for all is something -- It's really

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pretty hard to argue, Max. If you are being taxed by one method in one county -- and maybe your taxes are a little different in another county, which is true in many cases. Many ranches in this country have -- there's a difference in the value of land that lay -- the method of appraising land on one side of the county line and on the other. But, the thing I ask you to do is to recognize that in the best interest of the state and those that are living in the state of Montana, isn't it more logical that we should try to receive fair treatment for all, rather than for you in one county, or another county? That is the thing I embrace, and I ask you and all those in agriculture, not to say our taxes are going to go up tomorrow, but that true equalization of taxation is going to be of real benefit to the state of Montana.

DELEGATE CONOVER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: Will Mr. Drum yield to another question?

CHAIRMAN GRAYBILL: Mr. Drum, would you yield?

DELEGATE DRUM: Yes, Mr. Chairman.

DELEGATE CONOVER: Can you guarantee me that if the majority proposal goes through, that we will not be taxed on our private land on the valuation, but on the production of it?

DELEGATE DRUM: First, I would like to say that I

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learned a long time ago, not to guarantee anything. Not to guarantee that it's going to get dark tonight, not to guarantee that tomorrow is coming, not to guarantee that the sun is going to come up tomorrow. But, I would say if true equality is given to you, that you may go down as well as go up, Max. I don't know what the judgment play is, but I think that once you have true equality, that you certainly don't have anything to complain about. How can I -- Mr. Chairman, did I answer his question? No.

CHAIRMAN GRAYBILL: Well, he'll tell you.

DELEGATE CONOVER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: I have one way to go, I think. If it happens that we are taxed on our taxable valuation, I will have only one choice. I think I'll throw my ranch to Mr. Leo Graybill or else go home and shoot myself or hang myself. I'll take one or the other.

CHAIRMAN GRAYBILL: I can tell you which of those is best, Max. (Laughter)

George Rollins.

DELEGATE ROLLINS: Unlike my colleagues from district eight, I don't own land in three counties. I own, in company with the bank, a little bit of land in one part of a city. I am concerned that wherever my land is, or wherever anyone else's land is, that they all be assessed equitably. I want to

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bear my fair share of the taxes, and I want others to bear their fair share of the taxes. I also want to say, Mr. Chairman, that I have tried to support majority reports generally in these discussions. I wish to support the majority in this. I know that these people have worked hard. Now, Mr. Drum and Mr. Driscoll, between the two of them, don't know the difference between an old Irish philosopher and a noted English poet. I do think, that between the two of them, they have made a thorough, sincere study of taxation problems. Mr. Chairman, I oppose Mr. Eskildsen's amendment and stand in support of the majority.

CHAIRMAN GRAYBILL: Mr. Delaney.

DELEGATE DELANEY: Will Mr. Drum yield to a question?

CHAIRMAN GRAYBILL: Mr. Drum, will you yield?

DELEGATE DRUM: Yes, Mr. Delaney.

DELEGATE DELANEY: Could you give me a definition of true equality? Is this true equality in your mind, or in my mind or in somebody else's mind?

DELEGATE DRUM: I think it would be a judgment call of a fair, third party. If you were to say, I think I should pay so much in the way of taxes, and someone else would say, I think I should pay so much. It may be equal in their own minds, but it may not be equal in the other's. I think an impartial, third party should be brought into the picture, and I think this is what we are trying to do with the state legis-

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lature.

DELEGATE DELANEY: Thank you, Mr. Drum. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Delaney.

DELEGATE DELANEY: In order to receive true equality, or to receive any equality under the majority proposal, this would be by the state. I think it has been quite well brought out that you would probably have to come to the state to get any equalization, and you remove all your local equalization, your local county commissioners as the board of equalization. You're looking to the state for any equalization within your county, within your individual -- As Mr. Lorello brought up, if you didn't feel that your house or your ranch or anything, was equal, you would have to come to the state. You are eliminating your local county commissioners as boards of equalization. I ask you just to read Mr. Eskildsen's proposal. He is providing for equalization. He is providing for a board that will continue on six-year terms. Not a board or a man that varies with every session of the legislature or every change of governor, but a board that is sitting there to provide equalization. If you will go ahead and read the rest of that, it says shall increase, decrease, or otherwise adjust the assessed valuation of property established by the taxing jurisdiction to insure a fair, just and equal valuation of all taxable property between the different classes of property

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and between individual taxpayers. I don't think Mr. Eskildsen is asking for or advocating unequal taxation between counties, between individuals. He is asking for equalization, through a board that will be sitting there for a period of years, not that varies with every legislature, every change of governor. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Delaney, will you yield?

DELEGATE DELANEY: Yes.

CHAIRMAN GRAYBILL: Would you show the Chair where it says in section three that what you said will happen will happen? I don't understand your point.

DELEGATE DELANEY: The power of taxation will be equalized by the state in the manner prescribed by law.

CHAIRMAN GRAYBILL: How does that mean it will change every year?

DELEGATE DELANEY: It will be prescribed by law. Certainly, the intend as described in their comments, is to set up state equalization. State -- turn it over to the legislature to provide the state equalization.

CHAIRMAN GRAYBILL: It doesn't say that. I can't see it. All right, Mr. Delaney, thank you.

Mr. Brown.

DELEGATE BROWN: Mr. President. I would like to help Mr. Drum answer Mr. Conover and Mr. Delaney. If they will go to section seven, it provides for an independent board

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appointed on a five-year basis. This board is independent of the assessing board or body. However, it may be fixed up by the legislature. Now, as an attorney, I've had experience with trying to get equalization. Under our present method, you get equalization by the same people who assessed your property. It's a frustrating experience and you're normally very unsuccessful, and then you'd have to go to a district court. This majority provides for this tax appeal board. If you read the latter part of it, it gives you the right to have hearings in your county by an independent man who had nothing to do with the assessment. I've had experience with other administrative boards in Montana, and they do come to your own district. So, we have complete protection by an independent board that's much preferable to the present system. So, I support the majority.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Will Mr. Eskildsen yield to a question?

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: I'll try.

DELEGATE HABEDANK: Mr. Eskildsen. I apologize for probably not hearing an explanation you may have made. I listened to your entire presentation. I've been called from this body three times by people in three different areas in the state who have been informed that the majority proposal

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will change valuations to a market value, rather than the present valuation. I have answered each of these that I heard your presentation, but I can find nothing in sections three or seven which provides for valuation on the market value basis, rather than the same basis as we may have now. If I am in error in this, please inform me as quickly as possible without the fifteen minute presentation which you made, stating it would be all market value.

DELEGATE ESKILDSEN: Mr. Chairman. I'll try to do that. Now, in the constitution, it says that it shall be just and equitable. When we take that out of the constitution, then we go to statute, and we go to the legislature, and when they say -- In the statutes, it doesn't say fair and equitable. It says that it shall be market value. These are the differences between what the legislature can do, and what the constitution says shall be done. I think that income should be considered in assessing property. It has to be. If you take this out of the constitution, then you've reverting back to the statutes, and this is where the difference is.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Will Mr. Eskildsen yield to another question?

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Yes.

DELEGATE HABEDANK: There would be nothing to stop

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the legislature from changing the present law, which says all property shall be assessed at full value, is there?

DELEGATE ESKILDSEN: Mr. Chairman. No, there wouldn't, but there isn't anything saying that it would change, or that it wouldn't change it in some other way. I merely say that in the constitution, it says it shall be just and equitable. That's the reason I want it in the constitution, to show that it will be just and equitable, and not just fair market value.

DELEGATE HABEDANK: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Will Mr. Eskildsen yield to another question?

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: I yield.

DELEGATE HABEDANK: Will you point out to me in your amendment this just and equitable any more than is contained in section three and section seven? I'll read what I think is pertinent. The duties of such boards shall be to adjust and equalize the valuation of taxable property within their respective counties. Then you go on down and further say. The state board of equalization shall increase, decrease or otherwise adjust the assessed valuation, etc., to insure a fair, just and equitable valuation of all taxable property. Is that the difference that you're hanging your hat on? The just and

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equitable down in the body?

DELEGATE ESKILDSEN: You bet. That just and equitable is really important as far as I'm concerned. It's in the constitution.

DELEGATE HABEDANK: In other words, if the majority proposal had just and equitable in it, you would have no objection to it?

DELEGATE ESKILDSEN: Well, it would certainly help the majority proposal. But, the difference between the majority proposal and my proposal is, that I am in favor of a continuation of a board. We could compromise on this other stuff, but we could never compromise on their idea that it might stay this way, or it might be one man appointed by the governor to sit at his pleasure. My thought is that it should be the board, and I want to keep the board. That's the reason why we couldn't compromise.

DELEGATE HABEDANK: Thank you.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, and Members of the Committee. I was a member of the legislative council subcommittee which Mr. Berthelson referred to as being great authorities in this field we're discussing. We spent two years studying the Montana property classification laws. We worked and studied hard. We studied every facet of taxing property in Montana. The complexity of taxing property was overwhelming

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to the committee. My conclusion was that the present system, under the state board of equalization, works amazingly well over-all. It is flexible enough to stand the test of time, and changing economic fortunes. The legislature is presently working on a method to improve the operations of property taxation in the state, and if we preserve our present system, the deficiencies which exist now, may be corrected by future enactments of the legislature. Increases such as Mr. Eskildsen mentioned in taxes for agriculture, combined with low prices for wheat, dock strikes, etc., would put agriculture back in the position they had in the early 30's, when a good share of agricultural land was abandoned because the operators could not pay the taxes. The way it would probably operate now, is that the farm operators would have to sell off part of their property, or borrow more money against the land, to pay their taxes until the loans become too top-heavy and the banks have to foreclose. The whole question of property taxation requires a great judgment factor from the people charged with the responsibility of doing the same. My legislative council study indicated that the legislature, in wrestling with the problem over the years, and changing the laws, really didn't improve the situation very much. I also doubt that they would be able to do so in the future. True equalization is like perfection. It's a beautiful goal to be striving for, but one which will probably not ever be reached. It's for this reason

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that I support Mr. Eskildsen's proposal. It retains a system that I think works as well as any system can in the field of property taxation. We could throw this system out and experiment, but my prediction is that history will show that twenty-five or fifty years from now, that as many imperfections still will exist as we have at this time. I support the substitute motion and retaining local control.

CHAIRMAN GRAYBILL: Mr. Wagner.

DELEGATE WAGNER: Would Mr. Eskildsen yield?

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: I yield.

DELEGATE WAGNER: Mr. Eskildsen, under the present state board system, couldn't all property be assessed at full market value also?

DELEGATE ESKILDSEN: Yes, I suppose it could be, but you got to realize that it says in here too, fair and just, and this is what the board has used. They have used the fair and just method where they also take into consideration, income of property, not just market value of property. That's the difference.

CHAIRMAN GRAYBILL: Mrs. Warden.

DELEGATE WARDEN: Mr. President. I would just like to say that I was considering, when we were asked on committees what committee to be on, I would have liked to have been on this one. But, I was a little timid when I figured all the

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powers and brains that would be on it. I would like to stand and say that I am delighted with the majority report on this. I feel that this gives flexibility. It takes a lot of statutory law out of the constitution, and I think that we will have a much better equalization program because of this proposal by the majority. I firmly support it. Thank you.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman. I'm kind of troubled. A couple of times, at least, this morning, I have heard that the state board of equalization doesn't have any power to do these things. I just want to read part of the constitutional powers in our present constitution. The state board of equalization has these powers, to change, increase, or decrease valuations made by county commissioners or equalized by county boards of equalization, and exercise such authority, and do all things necessary to secure a fair, just and equitable valuation of all taxable property among counties, between the different classes of property, and between individual taxpayers. Said state board of equalization shall also have such other powers and perform such other duties relating to taxation, as may be prescribed by law. Now, our present constitution gives the state board of equalization the powers to change any equalization made by a county board, or anything like this in the state. Plus, it gives the legislature the power to give the state board of equalization any other powers

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as they want to prescribe to it by law. Now, we go to section three, and we're going to leave it all up to the law. Our present constitution, it seems to me, gave the state board an awful lot of constitutional power, and now it will all be law power. I cannot see how, if we couldn't get it done with all this constitutional power, we will get it done with just a little bit of law power. So, I'm going to support Mr. Eskildsen's amendment.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: I represent Judith Basin County, Choteau, Hill and Liberty and this week, I have been beseiged with phone calls, telegrams and letters from my four rural areas urging that we retain section fifteen and sixteen in Article Twelve. As you know, and I know the ranchers know, that it takes a good hundred acres of good grassland to support one cow. During a drouth or a time when there is an act of God, this land can change in valuation. It can go from ten dollars in pasture land to two hundred dollars or more in wheat land. We must retain the board so that they may change, as Mr. Gysler says. I urge you to support this amendment. Thank you.

CHAIRMAN GRAYBILL: Mr. Wagner.

DELEGATE WAGNER: Would Mr. Eskildsen yield to another question?

CHAIRMAN GRAYBILL: Mr. Eskildsen.

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DELEGATE ESKILDSEN: I yield.

DELEGATE WAGNER: Mr. Eskildsen. Should the state board of equalization decide to assess property at full market value, what recourse under our present constitution, or under your amendment, would we, as taxpayers, have to adjust this down to a fair and equitable basis? We could not go to the legislature, I don't believe, since the state board seems to have powers beyond the legislature.

DELEGATE ESKILDSEN: Mr. Chairman. That was kind of a long question. I hope I got it all. If the state board was to reverse themselves now from the way they're acting, the first thing that would happen is that they would end up in the courts, and the courts would decide whether it should be just and equitable, or whether it should be actual market value. That's where you'd end up in the courts.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Maybe I can throw some light as to where you people are getting all your wires and letters. On February 18th, there was a letter sent out to county commissioners and county assessors and it was signed by Leslie Joe Eskildsen. Here, in part, is what it says. This section removes our county assessors, our county boards of equalization, and our state board of equalization leaving property subject to taxation by a single tax administrator appointed by the governor. Farther on it says. It will be necessary that they

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employ a large staff of appraisers and technicians, simply to check the work being done by the state administrator and his staff. This is an uncalled-for duplication in my opinion. I further do not believe that our local taxpayers should be required to travel great distances to have their property tax appeals heard. Then further down -- Please call your delegates today and urge support for retaining sections fifteen and sixteen of Article Twelve. I think that explains a lot of your letters, telegrams and phone calls. I just thought the delegation ought to know.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: Mr. President. I also am concerned about the taxes on agricultural land going up two and a half times, as has been pointed out here. I think with the exchange of conversations we've had here between Mr. Wagner and Mr. Eskildsen, I feel that that really is not founded. I, too, have had telegrams from county commissioners that are concerned, and I have discussed with them over the phone. I think, largely, that they are somewhat misinformed here. I think we have inequities now in the present system. I know Mr. McDonough cited some cases where farmland was assessed at ten dollars an acre on one side of the fence, and eight dollars on the other side, or ten and six. I know, in my own area, in my county, it was assessed at ten dollars, and there wasn't even a barbed wire fence, and on the other side it was assessed at five dol-

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lars. Now, I'm sure the people in my area are not satisfied with that system. Also, the personal property tax on the state level. Personal property in my county was assessed at about two hundred twenty-five dollars per household, and in an urban area, it was assessed at twenty-five dollars per household. This is inequitable. I want fair taxation. I want it for farmers. I want it for everybody. I think we have to take our county assessors off the hook here too. They're in a rather bad position. I think the present constitutional powers to the state board are clumsy and rather unworkable. It seems to me that we could only gain from the majority report, and I support it.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President. Taxation is one of the more complicated things in government. I spent two years on the Taxation Committee trying to delve into all the facets and ramifications of taxation. It requires a lot of study, and a lot of concentration of study. Now, we are talking here about removing the state board of equalization. The state board of equalization was created with these thoughts in mind, that we should have an agency that would be somewhat insulated from politics, that they could make fair and equitable judgment on how property should be assessed in the state of Montana. This board, of a necessity, has to have some independence to be able to arrive at the difficult decisions on equity

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of assessment. If you remove this board, and go to an administrator, you have one man that will be performing these functions. He will be subjected to many pressures from special interest groups right on down the line, as to how they can get some favors in the assessment of their property. I submit to you that it is much more difficult to get favors from three men than it is one. We could go on and on and on and talk about taxes. We're going to have to pay more taxes. There's no doubt about that. I would submit to you that perhaps your next budget that will be submitted to the legislature, might be pretty close to two hundred and fifty million dollars. It has that aspect now. Where is this money going to come from? Think about this a little bit. Do you want one man that is going to sit down and try to figure this out? Would you rather have a board that is insulated a little bit away from politics so that they can make an impartial judgment of where this money is going to come from? I submit to this delegation that if the thinking of people out in the districts, out in the state, means anything to you, you better listen a little bit to what their thinking is. I have on my desk some thirty or forty letters and telegrams. Some of these telegrams have fifteen and twenty names attached to them that solicit retaining the state board of equalization. These are not just people that are jumping up out of the bushes, as Mr. Rygg would seem to indicate from Joe Eskildsen's letter. I had

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many of these letters shortly after I came up here. I represent five counties. I talked to each set of county commissioners in those five counties before I came to this convention. I asked them this particular question because I had seen in the reorganization plan, that they recommended the abolishment of the state board of equalization. There wasn't any hesitancy at all on the part of any of these commissioners that they wanted that state board of equalization retained. They felt they could work with this board in the equalization of taxes. They suggested, however, that the board be adequately funded, and adequately staffed to do the job. I think this is one of the fundamental, basic problems that has beset this board from the time of its inception. It has not had the staff, it has not had the auditing power to go out and really take a look at the various properties, facilities, large companies, etc., to be able to really do the job. I think that the state board of equalization does have, and will have, the flexibility to cope with the increased tax burdens that we see, that will be developed and put upon the people of the state of Montana. Looking at the tax sheet that was presented to you -- Now, there's two sheets. We only have one of them in front of us, but the Montana Assessors Association prepared a sheet and lo and behold when the two got together, they showed the same figures. Now, we can go back, if we want to talk about letting the legislative body do this, and we can consider the directive

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that came out of the 1949 session that said that all properties shall be assessed on a market value basis. Fortunately, we had the state board of equalization. They were troubled by this directive, and they went to the supreme court and asked what their interpretation of this would be. The supreme court told them that this would not provide a fair and equitable tax situation across the state of Montana, and the courts advised the board to proceed the way they are doing now. If you hadn't had the board of equalization, you would have, at that time, immediately went to market value taxation. If you look at the sheet before you, if you do go to market value taxation, look at the differentials. Look at what happens to net proceeds, utilities, other industry. You will see that those taxes from those companies drop dramatically. But, you look at your homes, your land, your real estate, your town property, and see what happens to them. In most cases, they would go up from two to three to very near four times the present taxes that you're paying now. Ladies and gentlemen, if we are going to heed what the people want, we are going to have to pay some attention to what their requests are. They were not, as I said before, brought up out of the bushes by Mr. Eskildsen's letter. These people have been thinking about this for three or four months. Some are dedicated county commissioners. I submit to you that most counties do have perhaps some of the more levelheaded, sensible-thinking people

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in their board of county commissioners as you can find anywhere in the state. When these gentlemen, who have attended many tax meetings at the state level and thought these things out, and the ramifications of the tax problems, urge you to retain this state board of equalization, I think you should pay some attention to them. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. The question arises on Mr. Eskildsen's amendment to section three, which replaces the present committee proposal for section three, with a proposal that retains the state board of equalization. Now, the Chair intends to let everyone speak at whatever length they insist. But, the Chair intends to try and get a vote on this matter before lunch.

Mrs. Pemberton.

DELEGATE PEMBERTON: Thank you, Mr. President. I will speak very briefly and very pointedly. I'm speaking, not from any telegrams or other influences, but from the confidence of the people from ten thousand square miles of Montana, and others representing Montana's great agricultural and livestock industry who know that the delegates from district number one will speak for them when the time comes. So, after forty-two years on a third generation cattle ranch, this delegate speaks from the northwest quarter of constitutional hall, and I speak for the retention of the board of equalization as pointed out through Joe Eskildsen. Thank you.

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CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman. I see nothing in the proposal of the committee that would warrant the fears that have been expressed this morning. I can only wish, Mr. Chairman, that more of our committees had met in the Mitchell Building. Thank you.

CHAIRMAN GRAYBILL: Mrs. Van Buskirk.

DELEGATE VAN BUSKIRK: Mr. Chairman. It seems to me that a lot of us are assuming what may happen under this adopted section three of the majority report. But, there is one question that arises in my mind. If we are going to finance a state wide education program, and also in our public health, welfare, labor and industry, we are proposing a state wide welfare program, how will that effect the tax system throughout the state? May I ask Mr. McDonough this question?

CHAIRMAN GRAYBILL: Mr. McDonough, will you yield?

DELEGATE McDONOUGH: If there is a state wide financing of education, and if there is a state wide levy for welfare, which is quite problematical because maybe the federal government will take that over in the end anyway -- As we said before, unless these are equalized, we don't have a fair levy of taxes to support education if it's a property tax. Like Mr. Skari pointed out, if the land is five dollars in one county and ten dollars in the other, the fellow in the ten dollar county is paying twice as much taxes for school than

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the fellow in the five dollar county. That's how that's going to affect taxes unless some attempt is made to equalize these taxes better than what they're done now.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. President. I'm going to watch the clock very carefully because I don't like to miss my lunch, but I think that this is more important than eating, because it may effect the breadbasket in years to come. Now, some of you are worried here about the property paying the bills of the schools. I am, too, worried about that proposition. In fact, I am going to introduce a section which is going to limit the right of the state to levy property taxes. Now, you may say that's going to violate the principle of the state supporting our schools on an equitable basis. We have other means of raising money to support our schools, even if the sales tax was defeated, even if income tax is unpopular. Nothing says, in the Cerrano case, that we have to support the schools by property tax. I firmly believe that property taxes should be used for a local purpose, for county government, for city government, and for any additional purposes that the schools may desire. I believe that and I'm going to fight for it. Now, I want to tell you my personal interest in this. Some of you have been telling your personal interests. I am not a big land owner, but I rent land, and I know what the landlord makes on his property, and I know he cannot

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stand to pay many more taxes. I am confident, too, that any state board will keep this in mind. No taxing agency is going to tax an industry out of business. I know some of you people are looking longingly at the grasslands of eastern Montana. I know you are looking longingly at the Williston Basin for some of this revenue. And, by the way, you are getting some of this revenue from the Williston Basin. Whenever oil is found on school land -- by the way, a couple of weeks ago, one of the biggest wells in the Williston Basin was on school land, and the state of Montana is going to profit by that well. I'm speaking now for the rest of the oil in Sheridan County, for Roosevelt County, and for the other counties that have oil. We're selfish; we want to maintain it there; we want to keep it there. I know you people who don't have it, would like to have some of it. But, actually, it isn't going to help you very much if you scatter it throughout the state of Montana. It's going to have just a dent in the tax load. Now, I have watched this tax proposition for a long time. Ever since I was in the legislature, I've tried to do something about it. We know that taxes are inequitable. We know that the assessments are inequitable. I'll give you an illustration. I went to pay my personal property taxes one day, and I had them assessed at one thousand dollars. That is with my refrigerator and the different things we have in the house. I presented this to the assistant assessor, and she said, Oh my God. I

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said, I know I'm lying like the devil. If you want to higher it, go ahead and make it higher. I don't care. You know what she said? You're too high. So, I said, okay, leave it the way you want to, I don't care. So, I walked out and I thought a minute and I said, well, my gosh, if I'm too high, what are the rest of them doing? So, I went back in again and I said, give me the assessment of eight different people who had about the same kind of a house and household goods as I had. You know what I found? Did you ever try that? You try it. That varied from two hundred and fifty dollars assessed valuation to eighteen hundred dollars in assessed valuation. Now, is that fair? Is that equitable? And, you don't have to go to personal property. You can go to real property as it has been mentioned. I'm sick and tired of the land being assessed higher than the land over here. A lot of people are sick of that. One of my county commissioners called me a week ago Sunday. I'm afriad of this thing that you people are proposing. I don't know what it's going to do. Well, I said, I've talked to you people a long time ago. Why don't you get this assessment equitable? He said, we are trying. We would like to have it equitable. We would like to be on the same basis as Roosevelt and Daniels county, but we have no force that makes us do it. We have no one telling us to do it. This is what we want today. We want some force that gets to these county commissioners or these taxing authorities to make this

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equitable. I may be not able to go home after I say this, but I'm for the majority report.

CHAIRMAN GRAYBILL: Very well. Mr. Mahoney.

DELEGATE MAHONEY: Mr. President. I've listened to a lot and I've probably fought more with the state board of equalization than any person in this room. I was on the Tax Committee in 1957 to 1959, and we certainly went over this reclassification. I want to tell you that I was a convert to the reclassification program. They had an awful time with me. I was afraid of it because I was afraid we were going to get just about what we got. I think that we lost five million dollars in it. By doing it, it cost the people. Now, I think the system is right. I don't think that we should go out here and abolish the county boards of equalization. This is what you're doing. Get down here where the people can get to these people and talk to them. What you're doing -- You're taking it out of the constitution and placing it back in the hands of the legislature. This is what you're doing just as pure and simple, because it will be abolished if the constitution is adopted, and I think it will. This local board, the only people you're going to have in this plan, -- and we're only discussing the other section; we'll come later onto the other section; I want to stay within the section we're discussing. They have this other plan of five appointed appraisers, I guess you'd call them. Now, right now in Cascade

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County, the state board of equalization cut the Anaconda Company property. The county commissioners have now hired somebody to go back and reappraise the Anaconda Company's power property in Great Falls. If this comes, I don't know that we will have that power under the next session of the legislature. This is a committee here today made up of people the same as going to sit in the next legislature, if we have a unicameral body. They're going to be elected from the same places and in the same state that we have now. I feel that we don't want to turn around here and abolish that local board of control. I don't know what the other government is going to say about this proposition of elected officials. We may wind up and have our county assessors appointed. I remember the mayor of the now Billings came out a few years ago and stated that he wanted one state assessor. I looked at him funny. I can see it coming closer all the time. We will have one office sitting up here in Helena that's going to do all the appraising, all the assessing, all the levy. As to the Cerrano case, I think we're using that very much more than is necessary. As I see Montana today, and I might be wrong, you have sitting out here first on your levies -- When the state of Montana sets up a basic foundation program. If they match the foundation program one hundred percent, I cannot see the Cerrano case any problem here. The point is their legislature is not matching the law that they said is the basic foundation program. Any-

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thing above that is extry that the districts themselves want to have some cream on the cake. I think this is something to watch. As to the welfare, I have to say that Delegate Van Buskirk was right. When it came to us, they want to take the welfare program out of the county -- and I think we have now made it a legislative responsibility in the committee I'm on. But, all of this bases back to property tax. Nobody has gotten any madder at the board of equalization than I have. I'm telling you, I have fought with them, because I think they haven't done their duty. I'm not sure that if we go out and create another board -- and I see this group here has been very mucn on not. I noticed that in the department of agriculture last night that was presented and adopted, there was no confirmation. Maybe this might come, so this person that -- This is on the board over there today on, not the property tax. It's the only one that's still in under the board of equalization. It's under a new one-man board or commission. I don't know what you'd call it, but I hesitate, and I hate to take away local peoples' rights to have their own board down on that county level. Thank you.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. President. The majority of the people in the three southeastern counties of Montana are very vociferous about their rights, and especially in this field. They really support our state board of equalization

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and our county commissioners. They're very careful of any change in this department. I strongly support Mr. Eskildsen's amendment.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I've listened carefully to all this and I'm not yet convinced that our present system is working perfectly. I am not convinced that the majority of the people think it's working perfectly and want it kept exactly as it is. I support the majority proposal because I think it has the possibility of bringing fair and equitable taxation.

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Mr. Chairman. I didn't intend to speak on this, and I'll be very brief. I am very concerned over this section and what has been said here today. I think we're arriving at a division between the rural and the urban areas of Montana on this constitution. I ran, and came up here, with the idea of improving our constitution, not necessarily doing away with a lot of things. I think that so far we have done that. There was a lot of talk about the justices of the peace. We didn't do away with them; we improved them. Executive, legislative -- I think we've improved them; we didn't do away with them. Now, we come to the state board of equalization and the county board of equalization. Maybe it shouldn't have been in the old constitution, but it's there.

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What are we going to do with it? It hasn't worked perfectly so are we going to do away with it? I submit, let's improve it. I would hope that whatever we come up here with is maybe a compromise that we can go out and have all the people support the constitution. In listening this morning, we find that the majority said, we're not going to abolish the state board of equalization. Maybe they're going to use it. Why can't we leave it in the constitution and improve it? Apparently, there are just a few words in this particular section of the old constitution that has hide-bound the legislature from this equalization of taxes. Maybe Mr. McDonough knows the words that are in here that have been in the cases, that have held back proper enforcement of equalization. So, why don't we adopt Mr. Eskildsen's motion here on the board of equalization and the county board of equalization, and then get down to the wording to put some power so that we can get equalization throughout the state, rather than going out of here with a state agency that's going to do all the assessing, and going home. They're going to ask you (inaudible -- mike dropped on desk.) -- and we'll say no. Why don't we improve what we have, rather than doing away with it? Thank you.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Will Mr. Ask yield to a question please, Mr. Chairman?

CHAIRMAN GRAYBILL: Mr. Ask.

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DELEGATE ASK: Yes.

DELEGATE REICHERT: I wonder if you could explain to me, in Mr. Eskildsen's proposal, how it can be improved? It appears to me that it is much the same as what we have in our present section fifteen. I'm wondering just how you envision improvement in our system with this proposal.

DELEGATE ASK: The first I'd seen it was this morning, and I haven't read it, but I gather it's very close to our constitution.

DELEGATE REICHERT: It is.

DELEGATE ASK: Apparently, the wording in here --

DELEGATE REICHERT: It's actually identical. That's why I don't understand the improvement aspect.

DELEGATE ASK: Apparently, it's the wording in here that gives the board the power of valuation and adjusting, etc.

DELEGATE REICHERT: I'll read you from the present constitution. It says the same thing.

DELEGATE ASK: Maybe we ought to change that wording so that the legislature has a little bit of control over the state board of equalization, so they can pass laws that will make taxation more equitable. That's what I'm after here. Let's improve our system, not do away with it. In fact, I really don't like the wording of the whole section but, I think it can be improved.

DELEGATE REICHERT: Mr. Chairman.

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CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Thank you very much. I appreciate that.

CHAIRMAN GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: Mr. Chairman. Due to the inequities in our county in the past few years, and due to the fact that I have received no telegrams opposing the majority report, I support the majority report.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman. It seems to me that we've been all around the horn, and what we're finally finishing up with is the fact that do we want the assessment to be done on a political basis, or a nonpolitical basis? That's really all it boils down to. When the state board of equalization was put in the constitution, it was put in there particularly to get assessments and appraisals out of political -- out of the political arena, and put them on as good a nonpartisan basis as it could be. That was the purpose of it. Now, it has been since 1922, and it seems that we've forgotten that lesson, so we want to go back to the political organization that we had previous to that. It seems to me that Mr. Eskildsen's proposal, with a few minor amendments, which I would prefer to make if it is adopted, could accomplish the purpose that we're looking for, and could also comply with the Cerrano-Priest cases. When Mr. Drum made his statement,

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he said that the third party would be the proper person -- an impartial third party. That's what this proposal establishes to do is to set up an impartial third party to make the appraisals, to make the judgments. It seems to me that the committee had a little inconsistency when they say, do away with the establishing of appraisals and assessments and put them in the political arena. Yet, they establish an appeal board in section seven which says, let's take the appeals out. It seems to me, that there's a little inconsistency there. I don't object to the appeal provision and I think it works fine with the amendment as Mr. Eskildsen has submitted it. Thank you.

DELEGATE TOOLE: The day before yesterday, I spoke to a rural group at Fort Benton, a large crowd. The general thrust of their feeling was that we're not doing our job here. We were sent down here to write a new constitution. They objected to the long ballot. They did not seem worried about the justices of the peace. They thought we should abolish them. I am no expert on the thinking of rural people, but it seems to me that judging from this meeting that we had in Fort Benton, that we've got more support from rural people than I had originally supposed, for the majority's proposal.

CHAIRMAN GRAYBILL: Mr. Wilson, I am trying to get Mr. Eskildsen to close, and you did have a long time. Do you really want to speak again?

DELEGATE WILSON: I have just a few words I would

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like to add to my previous presentation. It has been suggested here that there is quite a variation in the taxable assessments in the different counties. I submit to this delegation that the state board of equalization is working just as hard as they can, and in all the counties, particularly the two counties I am interested in. They are trying to arrive at an equal assessment and they are trying to reclassify the land, and they are working just as hard and fast as they possibly can. I submit that all they need is more time; I do agree with Mr. Ask that probably we could get this time, if we so desire to give the flexibility that the people seem to want.

DELEGATE ESKILDSEN: I would like to answer the chairman's remarks that I sent out a letter. Of course, I sent out a letter. That's what I'm here for. We don't want no surprises back home. We want the people to know what we are doing. I told them exactly what three was. It sets up a state wide way of appraisal, assessment and equalization. It does away with the county commissioners and the county assessors. If the legislature decides they want to use this same group, what have you improved other than that you took the state board out of the constitution? Unless you appropriate more money, unless the legislature appropriates more money, you're not going to have anything different that you've got now. The secret to the whole thing is enough money to do the job properly. One thing that the chairman also for-

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got to mention is there was another letter went out under the name of Mr. McDonough. So, I wasn't the only one sending letters out. I think that both sides should be heard over the state, and I submit to you that I got a pile of stuff here. You can't imagine how much there is in there. I imagine there is three hundred letters there from over the state, supporting me. I doubt if any of you can produce at least a dozen letters on the other side. I think that to put in section three would be a step backwards toward political control of the state board as the governors vary from year to year. I ask that you support my motion to delete section three from the majority plan and to adopt my substitute motion. I ask for a roll call vote.

CHAIRMAN GRAYBILL: Very well. We'll have a roll call vote on this issue. The issue is whether or not to adopt Mr. Eskildsen's amendment which has the effect of making the state board of equalization constitutional, in place of section three as proposed by the Revenue and Finance Subcommittee. All those in favor, vote Aye. All those opposed, vote No. Have all the delegates voted? Does any delegate wish to change his vote? Please cast the ballot.

Aasheim	-	Nay	Arness	-	Abs
Anderson, J.	-	Aye	Aronow	-	Aye
Anderson, O.	-	Nay	Artz	-	Nay
Arbanas	-	Nay	Ask	-	Aye

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1	Babcock	-	Aye	Eck	-	Nay
2	Barnard	-	Nay	Erdmann	-	Aye
3	Bates	-	Nay	Eskildsen	-	Aye
4	Belcher	-	Aye	Etchart	-	Aye
5	Berg	-	Nay	Felt	-	Abs
6	Berthelson	-	Nay	Foster	-	Nay
7	Blaylock	-	Nay	Furlong	-	Nay
8	Blend	-	Nay	Garlington	-	Aye
9	Bowman	-	Nay	Graybill	-	Abs
10	Brazier	-	Nay	Gysler	-	Aye
11	Brown	-	Nay	Habedank	-	Nay
12	Bugbee	-	Nay	Hanson, R. S.	-	Aye
13	Burkhardt	-	Nay	Hanson, R.	-	Aye
14	Cain	-	Nay	Harbaugh	-	Nay
15	Campbell	-	Nay	Harlow	-	Nay
16	Cate	-	Nay	Harper	-	Nay
17	Champoux	-	Nay	Harrington	-	Nay
18	Choate	-	Nay	Heliker	-	Nay
19	Conover	-	Aye	Holland	-	Abs
20	Cross	-	Nay	Jacobsen	-	Nay
21	Dahood	-	Nay	James	-	Nay
22	Davis	-	Nay	Johnson	-	Aye
23	Delaney	-	Aye	Joyce	-	Nay
24	Driscoll	-	Nay	Kamhoot	-	Aye
25	Drum	-	Nay	Kelleher	-	Abs

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Leuthold	-	Aye	Rollins	-	Nay
Loendorf	-	Nay	Romney	-	Aye
Lorello	-	Aye	Rygg	-	Nay
Mahoney	-	Aye	Scanlin	-	Nay
Mansfield	-	Aye	Schiltz	-	Nay
Martin	-	Nay	Siderius	-	Nay
McCarvel	-	Nay	Simon	-	Aye
McDonough	-	Nay	Skari	-	Nay
McKeon	-	Nay	Sparks	-	Nay
McNeil	-	Aye	Speer	-	Nay
Melvin	-	Nay	Studer	-	Aye
Monroe	-	Nay	Sullivan	-	Nay
Murray	-	Nay	Swanberg	-	Aye
Noble	-	Aye	Toole	-	Nay
Nutting	-	Aye	Van Buskirk	-	Nay
Payne	-	Abs	Vermillion	-	Aye
Pemberton	-	Aye	Wagner	-	Nay
Rebal	-	Aye	Ward	-	Nay
Reichert	-	Nay	Warden	-	Nay
Robinson	-	Nay	Wilson	-	Aye
Roeder	-	Nay	Woodmansey	-	Aye

CHAIRMAN GRAYBILL: Mr. Romney, for what purpose do you rise?

DELEGATE ROMNEY: I, inadvertently, hit the wrong button, and I can't do anything with it now.

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CHAIRMAN GRAYBILL: I think you were saved, Mr. Romney.

CLERK SMITH: Mr. President, thirty-two voting Aye, sixty-three voting No.

CHAIRMAN GRAYBILL: Sixty-three having voted No, and thirty-two having voted Aye, Mr. Eskildsen's amendment fails. The Chair has no other amendments proposed for section three. Does anyone intend to propose other amendments to section three?

Mr. Davis.

DELEGATE DAVIS: Mr. President. I have just a deletion amendment, which I have written out. It's to delete from section three the words, by the state. I move that --

CHAIRMAN GRAYBILL: Mr. Davis, if you're going to make an amendment of that nature, we'll take it after lunch. I just thought if we weren't going to have any more amendments, we'd settle it.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move the Committee recess until the hour of 1:30 o'clock P.M. this day.

CHAIRMAN GRAYBILL: The motion is to recess until 1:30 o'clock P.M. All in favor, say Aye. Wait a minute. Just a moment. Before we announce the vote, I want Mr. Schiltz to have a chance to make his announcement, and the Chair has an announcement.

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DELEGATE SCHILTZ: I announce a meeting of the Style and Drafting Committee immediately, and we can go in and out for lunch so long as we have quorum.

CHAIRMAN GRAYBILL: Very well. The purpose of our 1:30 luncheon is to give Style and Drafting a little bit of time here. We're in recess until 1:30 o'clock P.M.

(Adjourned 12:17 o'clock P.M.)

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MONTANA CONSTITUTIONAL CONVENTION

THIRTY-SEVENTH DAY

Friday, March 3, 1972 Convention Hall

1:36 o'clock, P.M. Helena, Montana

CHAIRMAN GRAYBILL: The Convention will come to order. The committee will be in session. Under the rules of the committee -- of the Convention, Delegates are allowed to rise to personal privilege and Mr. Foster has asked for the floor.

Mr. Foster.

DELEGATE FOSTER: Thank you, Mr. President. Fellow Delegates, recent news articles have interpreted my debate Thursday to cast discredit on the voting records of the Delegates from Silver Bow. This was in no way my intent. I was attempting to draw attention to the need for all Delegates to support a reclamation provision in this Constitution and was intending to appeal to Silver Bow Delegates for their support in the interest of all Montanans. Any interpretation of my remarks in the heat of debate to in any way suggest any Delegate of this Convention is not discharging his voting right in good faith is in error. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Very well. Before the recess we were debating section three of the Revenue and Finance proposal, and Mr. Eskildsen's motion was defeated. There is at least one other amendment proposed to section three. Mr. Davis,

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would you like us to read your amendment? Or, do you want to make it?

DELEGATE DAVIS: Mr. President, I move to amend section three, property tax administration, by deleting the words, by the state, and inserting in lieu thereof, as shall be just and equitable, so it would then read: Property which is to be taxed shall be appraised, assessed and equalized as shall be just and equitable in the manner prescribed by law.

Mr. President.

CHAIRMAN GRAYBILL: We take out by the state in lines twelve and thirteen, is that right?

DELEGATE DAVIS: Yes, sir, and insert, if you would, please, in there, as shall be just and equitable.

CHAIRMAN GRAYBILL: Very well, Mr. Davis has proposed an amendment to section three to strike the words, by the state, and add a phrase so the section would read: Property which is to be taxed shall be appraised, assessed and equalized as shall be just and equitable in the manner prescribed by law.

Mr. Davis.

DELEGATE DAVIS: Mr. President, fellow Delegates, I listened to the arguments this morning and despite the fact that the present Constitution says we will adjust and equalize --the Board will--between the counties and between classes, and despite the fact that our supreme court has held that additional powers could be given to them to do this by the legisla-

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ture, and despite the fact that a telegram was received from my commissioners to support Mr. Eskildsen, I voted against his proposal. But, I do think in your arguments this morning that were very persuasive, that we have somewhat of an inconsistency. When you talked about locking all these other words in the Constitution to make them flexible, when you put in by the state does not give the flexibility, it would seem to me, that you are talking about. When you assure various people by question that this would not change the situation necessarily as it is now, as far as your local county assessment is concerned, I submit that it would. You are still going to have to have your assessment records at the county level. You are going to have to have a county assessor, whether he is appointed by the state or whether he is appointed by some other method. You're still going to have to have all those records. This is an idealistic dream if you think it's going to solve all these problems by just putting this in in these few sentences. So, if you're going to be consistent, I submit that by the state would permit the legislature to continue with the office of the county assessor to assess under guidelines that are submitted, as they do now, to assess or to appraise and to keep that office functioning at the local level, rather than create a state bureau another board. In the interests of reform we continue to create more boards and more bureaucracy and the same people that want to have the people represented, one man, one vote,

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turn around and want to create probably what would be the biggest bureau or board in the state of Montana. Now, my county did reclassify. They spent thousands and thousands of dollars and hired a reclassification firm from Denver, and they reclassified to the extent that I'm sure we're paying a lot more than our neighboring counties, but the fact that many, many counties have reclassified, they have a great abundance of valuable records in the county that have been taken care of on a county basis, and I'm sure you're going to want the counties to pay their burden of this taxation by a county office that's still within the -- financed by the county under your county budget system. We still need to know what our valuation is in every county for all the budgets; regardless of where the revenue comes from, you're still going to operate your cities and your towns and your schools on a budget system. So, I submit that when you say you don't want to lock in wording and when you say that you are permitting the same system when you put in, by the state--if you strike that and put in it shall be just and equitable, which I'm sure is what you all want is a just and equitable taxation -- but I don't think you should lock a system in, totally statewide, and keep the legislature's hands tied as to whether they can say, we will have the county assessor's office continue to appraise or assess, and it can be equalized at the state level, or they can appraise, assess and equalize and it be checked at the state level. In other words,

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they certify all these assessments to the state at this time and then they can go over the ones that haven't properly assessed as between counties and make their adjustments, but the fundamental, basic work still has to be done at the local level and I strongly object to creating a super-board statewide, possibly political appointees all the way down through every county, and tie that into the Constitution. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Davis' amendment, which I'll repeat in case someone came in late, to section three, which would make the section read: Property which is to be taxed shall be appraised, assessed and equalized as shall be just and equitable in the manner prescribed by law, and which leaves out the words, by the state.

Mr. Rygg.

DELEGATE RYGG: (No audible response)

CHAIRMAN GRAYBILL: All right, Mr. McDonough.

DELEGATE McDONOUGH: We had some thoughts in the committee relative to these words, by the state. They were inserted in the end because we wanted to leave no doubt that the state would have these powers. It would preclude any other section of the Constitution of giving some local governmental officer these powers where you would get into a conflict, and that's why we put in here the words, by the state. We do not feel, however, that this restricts the legislature to enactment of a law that would have some state agency do it. Now,

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counties, as we know, are merely administrative units of the state and so are county officers, and there's no reason under this wording why the legislature couldn't designate the county assessor for their assessing officer in that county, or designate the board of county commissioners to have some other duty in the assessment process. The words, by the state, were put in just to preclude any other interpretation other than that the state has this assessing power and the legislature has the power to control the assessment. And, for that reason, I'd like to resist the amendment so it does remain clear that the state has this power.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Hanson.

DELEGATE ROD HANSON: Mr. President, I'd like to rise in support of Mr. Davis' motion. I think that this is somewhat of a compromise proposal and I believe will somewhat answer the objections that we have had from our rural areas. I still think, as Mr. McDonough said, the legislature -- he didn't say it this way, but the legislature could still handle it the way they wanted but it's possible we could have some local control.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I resist the motion, too. I'm afraid that if we take, by the state, and put in the words, shall be just and equitable, we are going to defeat our -- the very thing we want to do is try and get an equitable

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assessment. After all, these are the words they have been working on all these years and they haven't been able to do it then, so if we take out by the state and put in the other, I think we are defeating the purpose that we are going to need if we are ever going to have a statewide financing of schools. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there further discussion? Mr. Conover.

DELEGATE CONOVER: Will Mr. McDonough yield to a question, Mr. Chairman?

DELEGATE McDONOUGH: Yes, Mr. Chairman -- or, Mr. Conover.

DELEGATE CONOVER: The thing that I'm really concerned, would, with this amendment, would this give the county commissioners more power -- I mean, the same power that they have at the present time?

DELEGATE McDONOUGH: No, it would not. It leaves it up to the legislature to decide whether they want to give them that power or not.

DELEGATE CONOVER: Well, what I'm getting to, it's been two sessions ago, or maybe longer, when the state legislature passed a law that all new appraisable -- in the counties were to begin, and am I not right -- yet, today, we have a few counties that have not done this?

DELEGATE McDONOUGH: Have not reclassified?

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DELEGATE CONOVER: Reclassified.

DELEGATE McDONOUGH: I don't know if they have not done it. The testimony before the committee is certainly a number of counties haven't equalized properly.

DELEGATE CONOVER: Mr. Chairman, may I ask Mr. McDonough if he'll yield to another question?

CHAIRMAN GRAYBILL: You bet. Yes.

DELEGATE CONOVER: What I'm getting at -- is there a way we could still contain our county commissioners as appealing board in our counties? What I mean by this is, I think -- well, I shouldn't say think -- I know that our county boards, county commissioners realize the problems within the county and they know the property more than they would on a state level.

DELEGATE McDONOUGH: Well, there is -- actually, section seven provides for that hearing in the county. Now, there has been placed on the desk an amendment to section -- I mean, a different section seven, that requires in the appeal procedure that there be a local or county governmental level on the thing, and we intend, by that second sentence there, that if the legislature wishes, they could certainly make the county commissioners as the local county appeal board if they take them out of the business of actually levying and appraising the assessment in the first place. We still want those two things separate.

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DELEGATE CONOVER: Thank you, Mr. McDonough.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: If this is so, and we can still have -- contain this within our counties, then I'm going to support the majority proposal.

CHAIRMAN GRAYBILL: Very well. Is there other discussion?

Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, I resist the motion. Actually, if you read it -- if you take by the state out and -- as Mr. Davis' proposal suggests, it doesn't really change anything in this section. Unless there was some other restriction, the state would still have that particular power. Now, if you do leave it out, then conceivably the state's power could be limited in some other area. Just as it's stated here, whether it's in or out doesn't really make any difference, but the state should have that power, the legislature should have that power to regulate this to bring about the equalization. Now, I interpret the word, equalize, to mean exactly the same as just and equitable. I resist the motion.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President, will Mr. McDonough yield to a question?

DELEGATE McDONOUGH: Yes, sir, Mr. Wilson.

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DELEGATE WILSON: Mr. McDonough, is it your opinion that the county board of commissioners is not qualified to make levies in a county, and therefore you wish them eliminated as a board of equalization in a county?

DELEGATE McDONOUGH: Well, you said to make levies. I think they are certainly qualified to make the levies because they do make all the county and school levies. Do you mean make appraisals or make levies?

DELEGATE WILSON: Make appraisals, levies.

DELEGATE McDONOUGH: I think that certainly some county commissioners are qualified to make appraisals and probably a lot better qualified than a lot of people, but I think the farther we get away from any -- they're not as qualified, let's say, as some professional appraisals and they're not as qualified to make an appraisal that would be equitable for all the people of the state, as a general rule.

DELEGATE WILSON: Mr. Chairman, will Mr. McDonough yield to another question?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE WILSON: You feel, then, that the local board of county commissioners is not qualified, they don't understand the situation within their county to make appropriate appraisals?

DELEGATE McDONOUGH: County commissioners are human

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beings like any one of the rest of us, and I think from a statewide equitable basis, I don't think they are in all instances, no. Some of them are and some of them have been very excellent at it. Valley county has been excellent and other counties have been excellent, but I don't think on a statewide basis, they being human beings, they are that way totally.

DELEGATE WILSON: Thank you, Mr. McDonough.

CHAIRMAN GRAYBILL: Is there other discussion?

(No response)

CHAIRMAN GRAYBILL: Mr. Davis, do you care to close?

DELEGATE DAVIS: If you would permit, please. In the comments under the revenue and taxation, they state the state already possesses the power to levy taxes. They really don't need anything. But, they've included in this appraisal, assessment and equalization to create the biggest super-board, I submit, and the possibility of the biggest political situation if it's all going to be appointed, by whom? The legislature will provide that, but the legislature is prohibited by the language in this, I submit, to include county assessors. You can have a state assessor from Beaverhead county or an appraiser at the local level. In reply to the professional appraisal bit, I submit that the person that lives next door is the best person to keep -- be honest at the county level, anyway, when they complain that someone's house or land isn't taxed. Well, the last condemnation case I was involved in, the professional

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appraisers, at a hundred dollars a day or so for their services, varied from twelve thousand dollars for the land taken to a hundred and fifty thousand dollars. And they're professional appraisers. So, there can be just as great of any quality. You're going to have to create some structure to put this in the hands of one man or another board or someone to carry out this taxation. If it's taken from the board of equalization, who had constitutional mandate before to equalize between counties, you're not really strengthening it except that you're putting everything in a super state. The farther you can get from the individual, the farther you can get all of it. They could still provide a method where the state equalizes and make you make your corrections and make you honest between counties without elimination the function in the county at that level if the legislature thought it were wise. Also, the language that's been used here this morning in arguing, you've locked in all these other words -- they want to lock in this word now with a system they don't know whether it will work any better than the old system. I'm willing to give it a try but I think it should be consistent and not lock it in any more than you should lock in the others. Thank you.

DELEGATE McKEON: May we have a roll call? I call for seconds.

CHAIRMAN GRAYBILL: Yes, we'll have a roll call. Very well, the issue is on Mr. Davis' amendment to section

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three to strike the words, by the state, on lines twelve and thirteen, and insert in there a phrase, as shall be just and equitable, so the sentence reads: Property which is to be taxed shall be appraised, assessed and equalized as shall be just and equitable in the manner prescribed by law. So many as shall be in favor of Mr. Davis' amendment, vote Aye; so many as shall be opposed, vote No. Have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the vote.

Aasheim	-	Absent	Belcher	-	Aye
Anderson, J.	-	Aye	Berg	-	Absent
Anderson, O.	-	Aye	Berthelson	-	Nay
Arbanas	-	Nay	Blaylock	-	Nay
Arness	-	Excused	Blend	-	Nay
Aronow	-	Aye	Bowman	-	Nay
Artz	-	Nay	Brazier	-	Aye
Ask	-	Aye	Brown	-	Nay
Babcock	-	Aye	Bugbee	-	Nay
Barnard	-	Nay	Burkhardt	-	Nay
Bates	-	Aye	Cain	-	Nay

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1	Campbell	-	Nay	Harper	-	Nay
2	Cate	-	Nay	Harrington	-	Absent
3	Champoux	-	Absent	Heliker	-	Nay
4	Choate	-	Aye	Holland	-	Excused
5	Conover	-	Absent	Jacobsen	-	Nay
6	Cross	-	Nay	James	-	Nay
7	Dahood	-	Absent	Johnson	-	Aye
8	Davis	-	Aye	Joyce	-	Aye
9	Delaney	-	Aye	Kamhoot	-	Aye
10	Driscoll	-	Nay	Kelleher	-	Absent
11	Drum	-	Nay	Leuthold	-	Aye
12	Eck	-	Nay	Loendorf	-	Nay
13	Erdmann	-	Aye	Lorello	-	Aye
14	Eskildsen	-	Aye	Mahoney	-	Aye
15	Etchart	-	Aye	Mansfield	-	Aye
16	Felt	-	Absent	Martin	-	Nay
17	Foster	-	Nay	McCarvel	-	Nay
18	Furlong	-	Nay	McDonough	-	Nay
19	Garlington	-	Nay	McKeon	-	Nay
20	Gysler	-	Aye	McNeil	-	Nay
21	Habedank	-	Aye	Melvin	-	Nay
22	Hanson, R. S.	-	Aye	Monroe	-	Nay
23	Hanson, R.	-	Aye	Murray	-	Absent
24	Harbaugh	-	Nay	Noble	-	Nay
25	Harlow	-	Nay	Nutting	-	Aye

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Payne	-	Excused	Sparks	-	Nay
Pemberton	-	Aye	Speer	-	Nay
Rebal	-	Aye	Studer	-	Aye
Reichert	-	Nay	Sullivan	-	Nay
Robinson	-	Nay	Swanberg	-	Absent
Roeder	-	Nay	Toole	-	Absent
Rollins	-	Nay	Van Buskirk	-	Nay
Romney	-	Nay	Vermillion	-	Aye
Rygg	-	Nay	Wagner	-	Aye
Scanlin	-	Nay	Ward	-	Absent
Schiltz	-	Absent	Warden	-	Absent
Siderius	-	Nay	Wilson	-	Aye
Simon	-	Aye	Woodmansey	-	Nay
Skari	-	Aye	Mr. Chairman	-	Nay

CLERK SMITH: Mr. Chairman, thirty-four voting Aye, forty-nine voting No.

CHAIRMAN GRAYBILL: Forty-nine having voted No and thirty-four having voted Aye, the motion fails. We are now back on section three as the Revenue and Finance Committee proposed it. Are there any further amendments?

(No response)

CHAIRMAN GRAYBILL: Very well, members of the committee, you have before you on the motion of Mr. Rygg that when this committee does rise and report, after having had under consideration section three of the revenue and finance article,

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that the same be recommended as adopted. All in favor of that motion say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it and so ordered. Will the Clerk please read section four?

CLERK SMITH: (Reading) Section four, Equal Valuation: The assessed valuation of property to be taxed in any taxing jurisdiction shall be the same valuation as the valuation for state and county purposes. (End reading) Section four, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I move that when this committee does arise and report, after having had under consideration section four of Proposal Number Seven, it recommend that the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: The language and intent of this section is very similar to that of the present section six, article twelve, of the existing Constitution. This is an administrative section which prevents local governments from varying assessment levels to evade statutory mill levy limitations. States which allow taxing jurisdiction to set their own assessed

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value find that system to be unduly cumbersome. Texas residents for example, will often receive three or more tax bills, each showing a tax -- separate evaluation of their property for state, county, cities, school district and special district purposes. It is much more efficient to require that the property base be the same for all governmental levels and allow revenue to be adjusted by the mill levies. We do not feel that this is any departure from what we already have, but we feel it is still necessary and we ask that you allow it to remain in our proposed Constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there discussion?

(No response)

CHAIRMAN GRAYBILL: Very well, members of the committee, you have before you for your consideration, on the motion of Mr. Rygg, that when this committee does rise and report, after having had under consideration section four of the revenue and finance proposal, that it recommend the same be adopted.

Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, will Mr. Rygg yield to a question?

CHAIRMAN GRAYBILL: Mr. Rygg?

DELEGATE RYGG: I'll try.

DELEGATE ARONOW: Mr. Rygg, your comments under this are -- refer to section six of article twelve, and looking at

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it, that section deals with the release or discharge of taxes, while section five refers to the same valuation.

DELEGATE RYGG: You are correct. It is a typing error.

DELEGATE ARONOW: O.K.

DELEGATE RYGG: I'm sorry.

CHAIRMAN GRAYBILL: The error is in the explanation, right, and not the text.

DELEGATE RYGG: Right.

CHAIRMAN GRAYBILL: All right. Members of the committee, you have before you section four, as I just stated. So many as shall be in favor of adopting section four, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: It's adopted. Will the Clerk please read section five?

CLERK SMITH: (Reading) Section five, Property Tax Exemptions: The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries may be exempt from taxation, but any private interest in such property may be taxed separately. Property used exclusively for educational purposes, places for actual religious worship, hospitals and places of burial not

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used or held for private or corporate profit, institutions of purely public charity, may be exempt from taxation. Certain classes of property may be exempt from taxation. The legislative assembly may authorize creation of special improvement districts for capital improvements and the maintenance of capital improvements and the assessment of charges therefor, against tax exempt property directly benefited thereby. (End reading) Section five, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration section five of Proposal Number Seven, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: We have made a few changes in this section from the one that's presently in use. First, in line twenty-three on page nineteen, at the end of the sentence, you will see that we have used the word, may, instead of the word, shall. Now, we realize that it's hard to believe that the federal government would ever make any concessions as to what may be taxed, but just in the event that such a thing should happen, we thought we should be ready and change it from shall to may. In the meantime, it isn't going to make any difference because it's going to be controlled by federal action. We did

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delete some of the present exemptions. We took out agricultural and horticultural societies and mortgages. We couldn't really find out what agricultural and horticultural societies pertained to any more, although the way this section is written the legislature could establish these again as exemptions if it became necessary. We did add a few words that we thought might close up a loophole that presently exists. We provide that private interests in government -- in government-owned properties can now be taxed, things like right-of-ways and things like that, that are on federally-owned lands. And, we have spelled out the fact that special improvement district charges can now be made against tax-exempt properties. In most cases these charges are being now -- are being paid but there seemed to be a question of the legality and we thought it best to spell it out. Along with that, we have further provided that charges can also be made for the maintenance of these original capital investments that are made in the SID's. There has been a question of whether chip coating was part of an improvement, things like that, so we allowed for the maintenance on it, too. We further allowed that the legislature could have the freedom of adding certain other classes to this list in case the need should arise for this in the future. Now, our proposal doesn't require any taxation of all property, so we didn't feel it was necessary to make a further list of exemptions. In fact, we thought it might be detrimental to make

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these lists, as once you establish a list, that seems to be what they go by and it's hard to add them on from there, so the majority did feel this section would be better this way in the new Constitution than is the minority report. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman, I would like to move as a substitute motion that minority proposal number one on page thirty-two be adopted. Before I ask the Clerk to read it, we overlooked four words that we'd like to put on line seventeen after the word, dwellings. The words are, all or in part, and that has been sent out. Would the Clerk please read ours?

CHAIRMAN GRAYBILL: Would you tell us what line that is?

DELEGATE ARTZ: Line seventeen.

CHAIRMAN GRAYBILL: Dwellings all or in part used?

DELEGATE ARTZ: Right.

CHAIRMAN GRAYBILL: Let's straighten this out for the record, Mr. Clerk. All in favor of letting the minority add the words, all or in part, in line seventeen after the word, dwellings, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: So ordered. Very well, will the

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Clerk please read the minority report on page thirty-two?

CLERK SMITH: (Reading) The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries may be exempt from taxation, but any private interest in such property may be taxed separately. Property used exclusively for educational purposes; places for actual religious worship; hospitals and places of burial not used or held for private or corporate profit; institutions of purely public charity, household goods and furniture, wearing apparel, and other personal property used by the owner for personal and domestic purposes; cash and accounts receivable; dwellings and personal property of totally service-connected disabled veterans; dwellings all or in part used for residential purposes; evidences of debt secured by mortgages of record upon real or personal property in the state of Montana; the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed, may be exempt from taxation. The legislative assembly may authorize creation of special improvement districts for capital improvements, maintenance of capital improvements and the assessment of charges therefor, against tax exempt property directly benefited thereby. (End reading)

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman, when we were going

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through the judicial article, there's a Latin phrase there that I think expresses the intent of the minority committee which differs from that of the majority. If you will pardon my pronunciation, something like this: expressio unis exclusio ulternius, which means the expression of one is the exclusion of others. The minority report is in complete disagreement with all references in the rationale of the majority report stating that all property may be exempted from tax by the legislature. We have faith in the legislative process but are of the opinion that this is opening the door too wide. In our opinion, as upheld by court decisions, only the items of property listed above are eligible to tax exemption by the legislative process. We are especially worried about the one clause in the majority report that says certain classes of property may be exempt from taxation. You all got a letter from the Montana State AFL-CIO which backs our proposal on section five. We agree that in the past it has been easier it has been easier to enforce collection of taxes on some property than it is on other property but cannot consider this as a sufficient reason for removal of this type of property from the tax rolls. We maintain that in the future it will be easier to collect property taxes on all property because the function has been transferred from the county level to the state level. The Internal Revenue Service has developed procedures for ferreting out income from cash transactions. We maintain that Montana should be able to find as

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good qualified people as the Internal Revenue Service can. We know that they have an excellent IBM machine downstairs, over in the Mitchell Building, and we feel that proper utilization of this and other sources, it should be not too much of a problem in the future. Our main thought is this, tax equity requires that if certain income-producing property is taxed, then all income property should be taxed. We can see no equity to tax ten thousand dollars worth of equipment or other income-producing property which also has income taxes levied and at the same time give the legislature the right to eliminate ten thousand dollars of investments, say, tax exempt securities, the income tax of which is not subject to income taxes. We also submit that if we leave it open to the legislature that they are going to have the same pressures brought on us -- brought on them that were brought on us that you can't find these stocks and bonds; therefore, they should not be taxed. We maintain that if that is allowed to happen, a severe injustice will be imposed on lower income citizens who do not have tax exempted bonds and this will accrue to the benefit of more affluent citizens. We cannot imagine that the Delegates of this Convention will condone such an inequity. Now, to arrive at this, we admit that we had them make quite a long list. We justify the addition of the following items to the permissive list: household goods and furniture, wearing apparel, and other personal property used by the owner for personal and

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domestic purposes. This was recommended by Delegate Felt. Testimony received indicated that costs of collections are in many instances equal to tax received. The property does not produce income and, as Mr. Aasheim said this morning, sometimes you feel kind of guilty when you sign the thing because it isn't being figured out correctly. Cash and accounts receivable -- they are very fluid items. They do not produce income and also they were recommended by Delegate Felt. We realize that the term, accounts receivable, is a very broad one but we are sure that the legislature, in its ultimate wisdom, will be able to clarify exactly which ones that do not produce income could be exempted from taxation. Dwelling and personal property of totally service-connected disabled veterans: We had testimony stating that there are ninety-nine thousand veterans of which approximately only three hundred and eighty-seven would be eligible for this tax relief. We submit that this tax exemption is certainly justified when the mental picture of what total disability is considered. Dwellings all or in part used for residential purposes: Dwellings do not produce income. We realize that if you was to eliminate dwellings all at once it would create a severe hardship upon local government. That's why we put all or in part in. We've also put that in so that certain people that are now exempted, such as older people, limited income, a portion of their residence could be exempted from tax. It was a necessity, then, that we

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had to put in evidences of debt secured by mortgages of record upon real or personal property in the state of Montana. If we did not do that, we would have double taxation, which we also feel is inequitable. The last one, number six, the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed -- again, it was necessary to eliminate double taxation. That's all I have to say and I suggest that the Delegates approve our substitute motion. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, I rise in support of the minority proposal. The primary reason why I sided with the minority in this section was the language of the majority proposal that certain classes of property may be exempt from taxation. It was the feeling of the minority that this language was too broad and gave too much power to the legislature. It was also our feeling, Mr. Chairman, that this language would open the door to the pressure of special interest groups and might in the future cause to arise the situation where a large portion of our tax base might be deducted from the tax rolls. So, because of that section, we in the minority got together and tried to foresee and project what the most feasible exemptions might be. As Mr. Artz discussed, we submit the possibility of excluding household goods and furniture. As we all

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know, taxation on household goods and furniture is a sham presently. We heard testimony from a commissioner in Cascade county who told us that if you went by the tax rolls in Cascade county, you would be led to believe there are three color TV sets in the county. This indicates to me that it is impossible to profitably tax household goods and furniture. Mr. Artz has discussed other exemptions that we have included in our minority proposal. Possibly the most startling exemption is that of residential dwellings. It was our feeling that some time in the future, perhaps not the near future, this state might be able to afford the homestead exemption. We heard testimony from a representative from Missoula county, Mr. Watts, who testified on the homestead exemption and his plan. It was a good plan. We weren't able to study it sufficiently to determine if it was workable but we do feel, because residential property is not income-producing property, that in the future when Montana develops a greater tax base and more tax opportunities, we might perhaps exempt the residential dwelling. We also included as an exemption the veterans, one hundred percent disabled. We felt that this was very important. These people have injured themselves sufficiently to be one hundred percent disabled for the country and as a result we felt that it was perhaps the duty of the state to exempt them from the tax rolls. Mr. Artz talked about cash and accounts receivable, but the most important thing, again, is the statements of the

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majority allowing the legislature to perhaps exempt certain classes of property and, as I said, we felt this gave the legislature too much latitude and opened them up to too much pressure, so we have tried to include in our minority proposal those possible groups which might be excluded. Thank you very much, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, is there other discussion?

Mr. Davis.

DELEGATE DAVIS: Would Mr. Berthelson answer a question, please?

CHAIRMAN GRAYBILL: Mr. Berthelson?

DELEGATE BERTHELSON: Mr. President, I yield.

DELEGATE DAVIS: Mr. Berthelson, under the present system of taxation, are the bank stocks taxed separately? Is there a system of taxation of bank stock?

DELEGATE BERTHELSON: Yes, bank stocks are taxed, Mr. Davis.

DELEGATE DAVIS: The minority proposal, then, would eliminate a tax that is presently being paid by the banking --

DELEGATE BERTHELSON: No, I don't read it that way, Mr. Davis.

DELEGATE DAVIS: -- where it says the stocks of any company or corporation when the property of such company or corporation represented by such stock is within the state and

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has been taxed may be exempt from taxation. If the building were taxed, would the stock then not be taxed?

DELEGATE BERTHELSON: Mr. Davis, I don't wish to speak against the minority proposal at all, Mr. Davis, but I can see what you're getting at. Possibly you could misconstrue that to mean that a bank incorporated in Montana, the stocks might be exempt from taxation.

DELEGATE DAVIS: Well, could you possibly construe it any other way, if you're a corporation within the state, have all your stock in the state -- or it doesn't even say all?

DELEGATE BERTHELSON: Mr. Davis, I'll say no.

DELEGATE DAVIS: Thank you.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. President, I would like to resist the motion of the minority and give a few viewpoints as to what the majority meant by their present section five. Now, the state has the right to levy property taxes, income taxes and excise taxes--all types of taxes--to support both local and state government. Now, what we want to do here is give them a free hand as to how these taxes are to be levied in order to be the most just -- and we'll get back to those words again -- just and equitable. They should have this right. There's some property and some income you can't touch other than by an income tax. There's some property that is property that don't produce income and probably should not pay a tax and we've said

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they don't have to tax it. Now, we would like to give the legislature to be able to tax property as a property tax by another tax method. Now, let's get back to money and credits, stocks and bonds. I don't know how much of that is in the state of Montana and how much is owned by all the people of the state of Montana in that category, but we all know we can't tax it in a very efficient manner because you can't report it, your investigative procedures would take long; your county assessor would be spending a lot of his time issuing subpoenas for itemizations of that. Now, wouldn't it be better, going along with what Bill Artz said, to exempt that property from taxation and levy a special income tax on interest income to make up for that property tax you can't levy against that type of property, and that's the flexibility the majority is talking about by allowing the legislature to exempt certain portions of property. You have another problem on business inventory. Now, everybody knows that everybody lies on business inventories and they can't tax them and they can't really get a fair report, but it's very possible that the legislature may figure out a way and we of the committee, the majority of the committee, don't know how they'll do it but they'll probably be able to figure out a way in the next ten, twenty years to levy a gross proceeds tax on business inventories and be able to enforce it. They'll have to put some adjustments in it because gross proceeds -- grocery stores certainly have much more proceeds than -- and much more

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of a turnover than a hardware store, but it's something for the legislature to figure out, and that's why we'd like to take the fact that you must tax all property out of this Constitution and let the legislature work this out. Now, when you start itemization -- itemizing what is exempt from taxation, you get in trouble again. Now, for instance, in the minority report they talk about cash and accounts receivables. Now, to some people, accounts receivables are quite an income-making thing. All you have to do is look at your Bank of America card, your Master Charge card, your J. C. Penney card, or a conditional sales contract, which can all be carried on the books as accounts receivable, but which can make twelve or thirteen percent interest on it. So, that's why something like that should be left to allow the legislature to tax that type of property in some other method besides a property tax. Also, when we talk about cash and so forth and so on, we're talking about a lot of -- farmers actually have grain in the grainery and they treat it as cash. All they have to do is take a telephone call and they've got the cash for it. Well, if they exempt stocks and bonds, there's no reason why the legislature shouldn't exempt this grain in the grainery and be able to figure out another way to get at that property if and when it's sold, and pay the taxes. Now, actually, we have an exemption law in Montana now, the classification law, and which the legislature will still be allowed to do -- classify certain properties as

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to even their cash value and even after the state board of equalization has put different values on it, and they've got some things down in the one percent bracket. Well, the ninety-nine percent of that tax is then exempt under the classification law. Well, why don't we go all the way, allow the legislature to exempt certain classes of property and be able for them to get the flexibility to tax them a different way and thereby make the whole tax process of all three or four types of taxes and see if they can equalize the whole structure.

CHAIRMAN GRAYBILL: Is there other discussion?

(No response)

CHAIRMAN GRAYBILL: If not, the question is on Mr. Artz' substitute motion. The substitute motion is to substitute for section five in the majority report the language on page thirty-two, which is the minority report, covering lines six to twenty-eight thereof, and setting up a different system for property tax exemption. Mr. Artz, do you want to close?

DELEGATE ARTZ: I do. Mr. Chairman, Mr. McDonough was called the brain trust of the committee this morning, but I think his reasoning was a little bit faulty there in one spot. He says it's too difficult to tax the stocks and bonds because you can't find them. Then he turned right around and he says, well, we'll substitute an income tax instead. I maintain that if you can figure out what the income is on those stocks and bonds, it's just as easy to determine that the stocks and bonds

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do exist. We maintain in the accounts receivable that possibly the word is a little bit broad and there's certainly no intention that any accounts receivable, such as mentioned, that are earning income will be exempt from taxation. We have clearly spelled that out in our rationale and we think that would be sufficient instruction to the legislative body to be sure that does not happen. Thank you very much, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, do you want a roll call vote?

DELEGATE ARTZ: (Nodding, no.)

CHAIRMAN GRAYBILL: No. All right, so many as shall be in favor of Mr. Artz' substitute motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it and so ordered. Therefore, the issue is still on section five, as proposed by the majority on page eleven.

Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President, would Delegate Rygg yield to a question?

CHAIRMAN GRAYBILL: Mr. Rygg?

DELEGATE RYGG: I'll try, Mr. Chairman.

DELEGATE ERDMANN: In line with your very laudable effort to remove all unnecessary language from the current

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Constitution, I'm curious to know why you have continued to insert on line nineteen the words, and public libraries. Can you conceive, Mr. Rygg, of a public library that would neither be the property of the United States, the state, the county or the city? Thank you, Mr. Chairman.

DELEGATE RYGG: No, I don't believe so. I think it was in the language of the present Constitution and we just left it in there. Would you like to have it removed?

DELEGATE ERDMANN: (Inaudible. Microphone turned off)

DELEGATE RYGG: Well, I don't -- it's up to you, I guess, if you want to make that amendment. I don't think it makes that much difference to me.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Will Mr. Rygg yield to another question?

CHAIRMAN GRAYBILL: Mr. Rygg?

DELEGATE RYGG: Yes.

DELEGATE HARPER: This may not be a large issue. Mr. Artz said the committee heard testimony from totally disabled veterans groups and so they included this one kind of exemption in their listing, and I notice that the majority report does not. Is there any thinking on that?

DELEGATE RYGG: We -- Mr. Chairman.

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE RYGG: We did have considerable testimony on

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this. We certainly didn't want to take anything away from the totally disabled veteran and it was, I suppose, with some reluctance that some of us did not include it. However, we found that we did have a problem of total disability. We found out that perhaps on March first a person could be totally disabled and he could go to the doctor the next day and he'd only be sixty percent disabled. So, our problem was largely with the fact of when are you totally disabled, and I think -- our other thought was there could be totally disabled veterans who still might have considerable money but I believe they changed that in the minority report. But, this was our main problem, was when are you a hundred percent totally disabled and apparently the Veterans Administration admits that you can go from sixty to a hundred with an examination and that, I think, was the main reason we omitted that.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: May I answer Delegate Harper's question, also? I think another thing in the committee that became apparent to us was that there are perhaps three hundred and eighty-seven totally disabled veterans in the state but there are quite a large number of maybe ninety percent, or a bunch of eighty percent, there are another number of seventy percent and sixty percent, and the veterans organizations themselves seem to feel that this is a statutory matter. They are going to the legislature and try to allow the legislature to give them

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some relief in this area, and I think the concensus of our committee was that it is a statutory matter and should be left in their hands.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. President, would Delegate McDonough yield to a question?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE FOSTER: Mr. McDonough, on page eleven, starting line twenty-one -- property used exclusively for educational purposes, places for actual religious worship, hospitals and places of burial not used or held for private or corporate profit, institutions of purely public charity, may be exempt from taxation. Now, as a lawyer, is it your interpretation that this would mean the legislature could, in fact, tax these properties by a simple majority vote of the legislature?

DELEGATE McDONOUGH: Yes, they could. That's already under the present Constitution. We just didn't change it.

DELEGATE FOSTER: Thank you, Mr. McDonough. Mr. Chairman and fellow Delegates, I merely draw your attention to this because I think it is important to note that we are, in fact, giving the legislature essentially full powers of taxation and I submit that this is well and good because, in fact, the legislature is the proper place for taxation, it is the

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proper body to handle this problem, and I support the committee fully in this. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, members of the committee, you have before you for your consideration, on the motion of Chairman Rygg, that when this committee does arise and report after having under consideration section five, that the same -- that they recommend the same be adopted. Mr. Mahoney, did you wish to speak?

DELEGATE MAHONEY: Yes, I'd like to ask a couple of questions, Mr. President, of Mr. McDonough.

DELEGATE McDONOUGH: Yes, sir.

DELEGATE MAHONEY: Mr. McDonough, I'm down here where you say certain classes of property may be exempt from taxation. What do you mean?

DELEGATE McDONOUGH: We mean that the legislature may, by law, define and exempt certain classes of property.

DELEGATE MAHONEY: Mr. President, another question.

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE MAHONEY: Would this -- could it be possible for the legislature to exempt then all dwellings?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE MAHONEY: Wouldn't that be -- another question, Mr.President?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE MAHONEY: I have a series of them.

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CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE MAHONEY: What would that do to the city?

DELEGATE McDONOUGH: That would be the legislature's problem. They would certainly have to think of a way to replace that taxation that they deprive from the cities. I don't think they would. They wouldn't do it unless they had an adequate substitute for it.

DELEGATE MAHONEY: Now -- but you wouldn't -- then they -- but they could also go out and relieve all property taxes of, like farm lands and that, could they?

DELEGATE McDONOUGH: Yes, they could, but they would have to find a replacement for it.

DELEGATE MAHONEY: Why would they have to find a replacement?

DELEGATE McDONOUGH: They wouldn't have to. If they didn't want to raise the taxes that year, they wouldn't have to.

DELEGATE MAHONEY: I think you're running into a very dangerous field when you're letting them exempt classes of property. I think you'd better -- did you give this serious consideration? Now, what was your -- this hearing --

DELEGATE McDONOUGH: Yes, like I said before, the legislature has for ninety years exempted certain classes of property, partially or practically wholly. We're really not doing much different from what they've had in the last ninety

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years. By the classification act they have exempted certain partial parts of property.

DELEGATE MAHONEY: Didn't they keep one percent?

DELEGATE McDONOUGH: Yes, one percent they kept.

DELEGATE MAHONEY: The classification act is statutory and not constitutional, isn't that correct?

DELEGATE McDONOUGH: That's correct. What we're doing is allowing them to do constitutionally what they've been practically doing for years statutorily.

DELEGATE MAHONEY: Mr. President.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: I think this is very dangerous to allow them to loose, to go out and exempt certain property taxation -- classes. I'm wondering then if they couldn't go out and say, we'll exempt the Anaconda Company. Couldn't we go out and say we will exempt all public utilities in the state of Montana? These are the things that I'm starting to wonder that might happen in this state if we get into one session of the legislature, and I just question whether we want a constitution to allow the legislature to determine and exempt certain classes of property. That's all I'm trying to say on this.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Will Mr. McDonough yield to another question?

CHAIRMAN GRAYBILL: Mr. McDonough?

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DELEGATE McDONOUGH: Yes, sir.

DELEGATE AASHEIM: I'm also concerned about this same sentence. Did you have any particular property that you had in mind that you wanted to have exempt in this particular category?

DELEGATE McDONOUGH: No. I might say, though, that this wording or the same effect of it -- and I hate to bring it up -- is contained in the North Dakota constitution.

(Laughter)

DELEGATE McDONOUGH: But we didn't notice that until we got the completed form, which was after this thing was even printed, but I did notice that the other day when we got it.

DELEGATE AASHEIM: Thank you, Mr. McDonough. Mr. President and members of the assembly, I am just as much concerned about this as Mr. Mahoney. I think that this is a very treacherous piece of -- well, a very treacherous idea to leave in the Constitution. Just imagine -- you folks that are going to run for the legislature, now -- suppose you're in the legislature next winter and somebody comes up here and says, let's exempt these household goods. Let's exempt -- oh, let's exempt some farm land, and somebody starts dickering and they are wanting to trade votes. This happens, you know, once in a while. Can't you foresee that we are in trouble -- somebody might be in trouble, exempting certain classes of property? We know very well that household goods should not be taxed be-

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cause we know a lot of them are not taxed, and maybe they sho be exempt. I'd be all for that. But, to exempt any other classes, I would hesitate to do that because I can see the grave dangers within these legislative halls of trading, trading votes, and it does happen. You've heard of it, and there is a danger here. And, I'm tempted to put in here, after the word, taxation, on line twenty-five -- and I'm going to move this, and I know it's going to create a tempest -- on page eleven, line twenty-five -- but I think it should be ironed out.

CHAIRMAN GRAYBILL: Very well, Mr. Aasheim, just tell us your amendment. Don't give us a commercial here.

(Laughter)

DELEGATE AASHEIM: After the word, taxation, exempt personal property and strike -- exempt personal property.

CHAIRMAN GRAYBILL: What line are you on?

DELEGATE AASHEIM: Line twenty-five, page eleven, and then strike, certain classes of property may be exempt from taxation.

CHAIRMAN GRAYBILL: Now, the Chair understands that you have striken the sentence that says, certain classes of property may be exempt from taxation.

DELEGATE AASHEIM: Yes.

CHAIRMAN GRAYBILL: Have you done more than strike the sentence?

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DELEGATE AASHEIM: That's all, and after the word, taxation on line twenty-five, exempt personal property. Now, you may argue, well, what is personal --

CHAIRMAN GRAYBILL: Just a minute, Mr. Aasheim, I don't understand. You wanted to say, may be exempt from taxation -- exempt personal property? I don't understand. Line twenty-five, I've taken out the sentence, certain classes of property may be exempt from taxation. What's the rest of your amendment?

DELEGATE AASHEIM: Which personal property will be exempt -- let's put it that way -- and strike the other sentence. Now, --

CHAIRMAN GRAYBILL: Mr. Aasheim, I don't understand you.

DELEGATE AASHEIM: Well, --

CHAIRMAN GRAYBILL: So far, the Chair has taken out the sentence that appears on line twenty-five and twenty-six, certain classes of property may be exempt from taxation. Is there more to your amendment than that?

DELEGATE AASHEIM: Let's -- after that word, taxation, let's strike the words I said, except personal property -- let's strike certain classes of property may be exempt from taxation, and I'd like to hear this discussed further because I think this is a dangerous, dangerous sentence, as Mr. Mahoney has said.

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CHAIRMAN GRAYBILL: Very well, the sense of the Chair is -- the Chair will now rule that your amendment to section five is to strike the sentence, certain classes of property may be exempted from taxation.

DELEGATE AASHEIM: That's right.

CHAIRMAN GRAYBILL: Very well.

DELEGATE AASHEIM: And, I won't belabor this any farther because I think if we find that if we need to exempt certain classes of property, that as time goes on we can then --we can then go ahead and amend the Constitution, but I don't believe that we should have this influence, this terrific pressure that's going to be on the legislative body, to have this particular feature in it.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, I'd just like to tell Mr. Mahoney and Mr. Aasheim that I feel their fears are meaningless. At present, the legislature can reduce to, say, one percent or one-half of one percent in any class of property they want, which is, in effect, erasing the tax from one class of property and we can't prevent them from doing it, so what Mr. Aasheim does is really a meaningless act.

CHAIRMAN GRAYBILL: Is there other discussion of Mr. Aasheim's amendment?

Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I wonder if someone

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were to answer -- perhaps Mr. McDonough would yield to a question.

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, ma'am.

DELEGATE BATES: Mr. McDonough, in this exemption that you're speaking of here, I understand that under our present Constitution and our legislative body, we are now giving a relief from certain taxation for new businesses and industry. Is this right?

DELEGATE McDONOUGH: Yes, ma'am.

DELEGATE BATES: And, is this what you're referring to in this?

DELEGATE McDONOUGH: No, we're not restricting it to that. We're saying that the legislature can in some way. They are now giving them tax breaks of approximately -- I think they were taxing them at seven percent, which is quite a tax exemption by itself. What we are doing here is just enlarging that a little bit so that if the legislature doesn't want to tax it at all for various reasons -- efficiency, cost -- and if they don't have to, and that's all we're doing here. We're not really -- I don't think in practicality and the working of the assessment schedule, we're really not changing it that much.

DELEGATE BATES: Mr. Chairman, would Mr. McDonough yield to another question?

CHAIRMAN GRAYBILL: Mr. McDonough?

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DELEGATE McDONOUGH: Yes, ma'am.

DELEGATE BATES: Mr. McDonough, then it isn't actual classes or it could be comparative type of industry that may be relieved of some of their tax burden. Is this possible under this amendment, and be in competition with local businesses?

DELEGATE McDONOUGH: If it can be classified, it would, yes.

DELEGATE BATES: O.K., thank you.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: May I ask Mr. McDonough a question?

DELEGATE McDONOUGH: Yes.

DELEGATE HARPER: If it's true that having that sentence in there -- certain classes of property may be exempt from taxation -- does not really change the picture, am I right in thinking that if the sentence were not in there, it also would not change the picture very much? In other words, is the sentence worth fighting for?

DELEGATE McDONOUGH: Yes, it is. I think it is. Actually, now the assessor must by law -- sometimes they don't -- must list all property on the assessment rolls. By leaving this out, and if the legislature so desires, he doesn't have to list the personal property. The legislature might -- I mean, household goods and furnishings. The legislature might, if they decide to tax or keep taxing that thing, they might find a more practical way of taxing furniture and personal property than

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the listing schedule and the assessment method that they do now where they either have to make the personal calls or call them on the telephone or go over and actually look at the house. I think that it's important enough to be in there and I think it just assists the legislature in performing its duties and the county officials to do their duty and do it properly, where we don't go through the actual sham of the classification act.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, if it's in order, I would like to amend Mr. Aasheim's amendment, whereby on line twenty-five, strike the words, certain classes of, and insert in lieu thereof, personal, so that sentence would then read: Personal property may be exempt from taxation.

CHAIRMAN GRAYBILL: Now, you're making an amendment to Mr. Aasheim's amendment?

DELEGATE CHOATE: Right.

CHAIRMAN GRAYBILL: All right, section five. Very well, Mr. Choate has amended Mr. Aasheim's amendment. I think I'm going to call that a substitute amendment since Mr. Aasheim took it out and you can't amend it if it's out, so I'm going to call it a substitute amendment, which has the effect of putting back in this sentence: Personal property may be exempt from taxation. Is that correct? But it has the effect of leaving out the words, certain classes of. So, we are now debating Mr. Choate's substitute motion -- substitute amendment -- substitute

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motion, which is: Personal property may be exempt from taxation, on line twenty-five and twenty-six.

Mr. Davis.

DELEGATE DAVIS: Mr. President, I would amend the substitute motion to add the words, certain classes of.

CHAIRMAN GRAYBILL: Very well, Mr. Davis' -- now we are full up, for everybody's information. Mr. Davis' amendment has the effect of adding the words, certain classes of, back in so it now becomes: Certain classes of personal property may be exempt from taxation, and the effect of the amendment now is to add the word, personal, before property. Mr. Davis, do you want to discuss that?

DELEGATE DAVIS: Just briefly. I support the majority but if we are going to have an amendment, I don't think you should give the legislature authority to either exempt or not exempt personal property. I think the definition of that is being misunderstood here. That covers a wide spectrum. If it's the will of this Convention to limit this, then I think it should be classes of personal property be exempt rather than all.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, the present Constitution attempts to place a tax upon practically everything, with a few exemptions. The proposal here is to exempt everything except in a few items. All the trouble in taxation, excepting

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paying the taxes, is in the field of exemptions and the fewer exemptions we can have, such as a variation in the percentages of values, which we have now on our property tax, such as the depletion allowance in the federal oil situation, and things like that. Every time you exempt anything you throw everything else out of kilter and give somebody a special privilege, so I think the fewer exemptions we have, the better off we are. And in the majority article here -- offering -- the exemptions are fairly well cut to a minimum. They are mainly governmental or religious or educational, and they are beyond -- the profit motive is not involved. So, I think they are restricted about as much as you can get them but if you start adding other exemptions, you are going to get into difficulties and it's going to throw a terrific burden on the next legislature, but we've been throwing terrific burdens upon the next legislature throughout this Convention, and will probably be doing it for the next two weeks, so I don't see any reason why we shouldn't do it in this case.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, will Mr. McDonough yield to a question, please?

CHAIRMAN GRAYBILL: Mr. McDonough, will you yield?

DELEGATE McDONOUGH: I yield.

DELEGATE NUTTING: Is there any place in this article that it says that all tax -- that all property must be taxed?

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DELEGATE McDONOUGH: No.

DELEGATE NUTTING: Will you yield to another question, please?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes.

DELEGATE NUTTING: Then, what is the use of section five? Because, it just says these may not be taxed and they don't have to be taxed anyway, so I can't see that the whole article means anything.

DELEGATE McDONOUGH: Well, the present Constitution itemizes the exemptions in the first two sentences. They are listed there because who owns that property? The state or the federal government owns that property. It might not be a different class of property but they own it, and these religious organizations own it, and you might not be able to fit that into a class that can be exempt by that third sentence. That's why they're itemized in there, that regardless of the class of property, if they're owned by a charitable or governmental organization, the legislature may exempt them from taxation, and that's why we itemize. And, besides, those organizations want to make sure their status stays the same as it was for the last ninety years. That's the main reason.

CHAIRMAN GRAYBILL: Very well, the discussion is on Mr. Davis' motion to add in certain classes of, so the sentence now reads: Certain classes of personal property may be exempt

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from taxation.

Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, would either Mr. McDonough or -- I believe Mr. McDonough will be fine -- would you answer a couple of questions?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE MAHONEY: Would you tell me which one of these property classifications that are down to one percent?

DELEGATE McDONOUGH: I think there's something in the last legislature, I think it's disabled veterans at one percent. Mr. Drum is showing you a book there. And free port is down to one percent.

DELEGATE MAHONEY: Now, those two don't make up much property, do they?

DELEGATE McDONOUGH: I have no idea. It wouldn't -- no. The free port could. There's no reason why free port couldn't.

DELEGATE MAHONEY: Mr. President.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: If you will go and look at the book and I happen to know and I didn't realize there was one percent -- I thought seven percent was the lowest. I think that old people's homes were cut to eight percent. There is a thirty-three and a third percent; that is the actual top except

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for parts of mines, I believe it is -- it's mining stocks, that's a hundred percent. If you have mineral rights, that's a hundred percent. Otherwise, from this thirty-three and a third percent is the highest amount that's on there and that's on livestock. Land is thirty percent, then you drop down to twenty, and the low one that I remembered about was wheat at seven percent and solvent credits are seven percent. Now, if we're going out here to exempt property, all classes of property could be exempted, and I think that we had better check very closely before we let the legislature. Pressure comes on and I've seen it a good many times, too, all of a sudden. I got a bang out of the distinguished gentleman from over in Sheridan county, Mr. Aasheim. He started to talk personal property, then he stopped. I know why he stopped -- cattle, machinery, cars, all of this stuff becomes personal property -- and if we take all that out, where are we going? I want to thank you, Mr. Aasheim, for stopping at the personal property thing because we'd have had very little left but some land and a few buildings under the property tax. Now, I wonder -- I know Montana must open up a different system the next session of the legislature. Always in the past we've patched. They have been patching for years, looking for the ultimate time to get the sales tax, and last year that went down the drain. Now we must start over and I would certainly hesitate to let this next session of the legislature now start to exempt some prop-

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erty. We might wind up with very few paying and this is where I don't think the one percent, the discussion of the one percent nor the five or the eight or ten or thirty percent is a reasonable thing in this question. And, let's do a lot of thinking before we're going to allow the legislature to exempt classes of property. That's all I have to say, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, would Mr. Mahoney yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Mahoney?

DELEGATE MAHONEY: I'll try.

DELEGATE REICHERT: I have before me the journals from the last session and, as mentioned by Mr. McDonough, the free port bill, which was House Bill 267, is an act relating to the classification of property for taxation providing a basis for the imposition of taxes, in effect an exemption, and then I have in the senate journal, Senate Bill 36. What I don't understand, if these exemptions are allowed now--if the legislature can do that--why are we so concerned about this section, this one sentence in section five -- certain classes of property may be exempt? Can't they now be exempt by the legislature?

DELEGATE MAHONEY: Let me state this, that if a free port bill -- this is merchandise that stops enroute and the legislature actually went in and put a tax on something that

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most the states have never even taxed because it's free port - just stopped overnight in the state of Montana or in a warehouse. This is what free port merchandise is.

DELEGATE REICHERT: My question is, though, cannot the legislature now make exemptions?

DELEGATE MAHONEY: I don't know as though I want to give them all that power.

DELEGATE REICHERT: Don't they now have it?

DELEGATE MAHONEY: No, they still have to tax at one percent. They have to still put it on.

DELEGATE REICHERT: Thank you.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, there's two sides to the coin apparently, and I see a little more sense to the majority proposal in this one sentence than I read before when it was brought up that if we limit this to personal property exemption, then what will we do about the old people that just barely have enough to maintain their home rather than go to a county rest home, or a disabled veteran, because we would remove from this any exemption on real property, and I do think it's a mistake and I therefore withdraw my motion and leave it up to Mr. Davis to pursue his. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, Mr. Choate's motion is withdrawn, but we're still on Mr. Davis' motion.

DELEGATE DAVIS: Mr. President, my --

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CHAIRMAN GRAYBILL: Just a minute. Just a minute. I just wanted to state it again, Mr. Davis. Mr. Davis' motion has the effect of making the sentence at line twenty-five read: Certain classes of personal property may be exempt from taxation. Is there other discussion before he closes?

Mr. Davis.

DELEGATE DAVIS: I want the tail to go with the hide. I withdraw mine, too.

CHAIRMAN GRAYBILL: Well, it's considered withdrawn, for whatever reason, Mr. Davis. All right, we're back to Mr. Aasheim's motion which is to strike the line -- the sentence: Certain classes of property may be exempt from taxation -- strike the sentence entirely. Now, is there further discussion before Mr. Aasheim closes? Mr. Choate -- or, I mean Mr. Conover, pardon me.

DELEGATE CONOVER: Mr. Chairman, will Mr. Mahoney yield to a question?

CHAIRMAN GRAYBILL: Mr. Mahoney?

DELEGATE MAHONEY: I'll try.

DELEGATE CONOVER: Charley, if we delete this sentence --certain classes of property may be exempt from taxation--will this give the legislature the power to exempt our old folks, retired in these homes, that have been taxed beyond their --

DELEGATE MAHONEY: No. No.

DELEGATE CONOVER: Thank you.

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CHAIRMAN GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, I wonder if Mr. McDonough would yield to a question, please?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, ma'am.

DELEGATE BOWMAN: Mr. McDonough, if we deleted this sentence, as Mr. Aasheim would like to do, would that make it impossible for the legislature to grant an industry, say, a certain amount of tax relief for pollution control or a certain amount of tax relief in an effort to get an industry to come into the state?

DELEGATE McDONOUGH: Well, if it's deleted --

DELEGATE BOWMAN: Yes, that is my question.

DELEGATE McDONOUGH: -- then a court might construe this whole section that you still might have to tax all property. Now, if it's left in, under certain rules and regulations that would not violate the Fourteenth Amendment on discrimination and so forth, the legislature could give such an exemption.

DELEGATE BOWMAN: Thank you.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman, will Mr. McDonough yield?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE JAMES: If we took this out, would it be

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possible to aid one hundred percent disabled veterans, if we deleted this? Could we still do that or is this necessary to leave in to accomplish this purpose?

DELEGATE McDONOUGH: Well, if they can write the statute that would put that into a class of property --

DELEGATE JAMES: Well, could we write a statute without this in, though?

DELEGATE McDONOUGH: Well, they've done that by bringing it down to one percent. Actually the same thing.

DELEGATE JAMES: Thank you.

DELEGATE McDONOUGH: I might note that, Mr. James, the Constitution --

CHAIRMAN GRAYBILL: You may finish.

DELEGATE McDONOUGH: Oh --

CHAIRMAN GRAYBILL: Go ahead, Mr. McDonough.

DELEGATE McDONOUGH: I'm sorry, Mr. Chairman. I might note that Mr. James showed me the Alaska constitution, which also has the wording we're proposing in section five, which is: Other exemptions -- wait a minute -- other exemptions of like or different kind may be granted by general law.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President, fellow Delegates, speaking on this and for the majority report, we need a free port in Montana. Even the one percent tax prevents us from having other industries in Montana. At a recent industrial

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development meeting up in Kalispell, we were informed that the port of Seattle, which is a free port, has leased thirty thousand square feet of warehouse space in Chicago for the purpose of bringing in packaged goods and different things, repackaging these things and shipping them on. Now, with us being fortunate to have the Amtrack running both the south and north part of our state, this could open up an entire new business for us, not only in Whitefish on the rail line, but in Shelby--the whole -- across the northern part of our state and also down in Billings and the southern part of the state, in Butte and so on. I think this is an important thing to leave in the article as it is. Thank you.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: I wonder if Delegate Aasheim would yield to a question?

CHAIRMAN GRAYBILL: Mr. Aasheim?

DELEGATE AASHEIM: I yield.

DELEGATE ARBANAS: Is it your understanding now that the tax exemptions can go down to one percent by law?

DELEGATE AASHEIM: Presently, yes.

DELEGATE ARBANAS: Now, it just occurs to me, and I'd like to have your concurrence or reflection on it, in many cases it would seem to me, it would cost us more to collect that one percent and the taxes would have to be worthwhile, so that we are not really accomplishing anything as far as actual revenue.

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Would that be possible?

DELEGATE AASHEIM: That's very possible, Mr. Arbanas. May I close?

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I can't really -- and I wonder that Aasheim and Mahoney are so worried about the legislature. I really do. As bad as that legislature, the next one and all of those are going to need money, I can't understand how you think they're going to exempt certain classes. I just can't see that. And, certainly, that's not the intent of this but if there's something that later on has to be exempted, it's there and we can do it, but as far as exempting large classes of property to reduce the income from Montana, that just seems inconceivable to me, and I know a little bit about pressures and I know that, but I also know the pressure of getting enough money to pay the bills and I think that would come first. And, I frankly can't see why that sentence bothers you. I think we need it in there just in case in the future there is something that has to be an exemption, along with some of the others we already have. I think you're overly-cautious about that. I don't think you have anything to worry about. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman --

CHAIRMAN GRAYBILL: Oh, wait a minute.

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Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, just very briefly, I wonder if the Convention realized the significance of Mrs. Bowman's question and whether or not it was adequately answered. We certainly don't want to put ourselves in a situation where we can't exempt taxation to encourage non-pollution, and if this -- Mr. Aasheim's amendment would do that, I'm certainly opposed to it because we want to encourage tax exemption for non-polluting industries, and not necessarily exemption -- temporary exemption, possibly, while the non-polluting facilities are being amortized, and I think it's a very significant question Mrs. Bowman asked and I'm not sure the Convention realizes the full import of it.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, I still didn't get my answer from Mr. McDonough because as I read the old Constitution, section one, article twelve, it says that all property shall be taxed. No place in this new article does it say all properties shall be taxed, so as far as I'm concerned, whether we take it out or put it in -- we put in section five or we take section five out, it still doesn't make any difference. It leaves it up to the legislature, so I can't see what we're arguing about on this whole article. It's meaningless.

CHAIRMAN GRAYBILL: Mr. McDonough, you may respond.

DELEGATE McDONOUGH: Yes, I think Mr. Nutting is

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basically right. But, we put it in there to make sure a court couldn't construe it any other way than to make sure that this body knew what we were doing when we wrote this article on this exemption. And, he is right, generally.

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman, I support Mr. Aasheim's motion as a compromise between the majority and the minority reports. Thank you.

CHAIRMAN GRAYBILL: Mr. Aasheim, you may close.

DELEGATE AASHEIM: Mr. Chairman, I was concerned about this and it wasn't properly aired. And, in reply to Mr. Mahoney, yes, I have selfish motives for everything I do, and I challenge you to say otherwise, but my personal property taxes aren't worth arguing over. I'm glad to pay them, but I think the present system of assessing household goods just smells to high heaven, as I said this morning, and that's why I wonder about taxing them, and I think I have the sense of the committee, the group. I think that we have to give the legislature a little leeway, so with that, I'm going to withdraw my motion.

CHAIRMAN GRAYBILL: Very well, Mr. Aasheim has now withdrawn his motion and we're back with the committee language. Are there other --

Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, I haven't had time

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to write this out, but I move to amend by including after -- the first sentence in section four the first sentence of the old Constitution.

CHAIRMAN GRAYBILL: You mean section five?

DELEGATE NUTTING: The present Constitution.

CHAIRMAN GRAYBILL: You mean section five, I presume.

DELEGATE NUTTING: Section one -- the first sentence of section five would be the first sentence of section one of article twelve --

CHAIRMAN GRAYBILL: Would you read --

DELEGATE NUTTING: -- which would read: The necessary revenues for the support and maintenance of the state shall be provided by the legislative assembly which shall levy a uniform rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, except those specially provided for in this article.

CHAIRMAN GRAYBILL: Mr. Nutting, I have to have that sent to the Chair, please. All right, I have it now. You may want to write this down. If you do, I'll read it carefully. The present article twelve, section one, of the present Constitution, Mr. Nutting wants to add the first sentence of that section to section five -- at the beginning of section five on line seventeen, so subsection five would read: The necessary revenue for the support and maintenance of the state shall be

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provided by the legislative assembly, comma, which shall levy a uniform rate of assessment and taxation, comma, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, comma, except that specifically provided for in this article, period. Once again, now, the amendment would add this sentence: The necessary revenue for the support and maintenance of the state shall be provided by the legislative assembly, which shall levy a uniform rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, comma, except that specifically provided for in this article. Then, continuing on, the property of the United States, et cetera, as shown on line seventeen, page eleven. Mr. Nutting, is that the sense of your amendment?

DELEGATE NUTTING: Yes, that's correct. I just think that we have nothing here that says all property will be exempt -- will be taxed, so what is the purpose of having exemptions to something you don't have to tax in the first place. And, by this it says, all property -- all property shall be taxed with the following exemptions. I think that clears that up.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, would Mr. Nutting yield to a question?

CHAIRMAN GRAYBILL: Mr. Nutting?

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DELEGATE NUTTING: Yes.

DELEGATE SCANLIN: What is the difference between your amendment and section one of the proposed article?

DELEGATE NUTTING: It says taxes shall be levied by general laws for public purposes. It doesn't say all on anything.

DELEGATE SCANLIN: Well, Mr. Chairman --

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: -- from my point of view, that would include what Mr. Nutting is trying to say.

CHAIRMAN GRAYBILL: Well, Mr. Scanlin, if this is helpful to you, the section one simply says that the taxes levied have to be levied by general laws, but Mr. Nutting's point is that it doesn't say all property has to be taxed.

Mr. Harper.

DELEGATE HARPER: Mr. Nutting has said two or three times now that what he is saying is that nowhere do we say that all property must be taxed. I was just wondering, Dick, when you read all of that, since part of it does conflict in a sense, or is repetitious to some of sections one, two, three and four, why you couldn't just say, all property shall be taxed except--and move right on in to number five. Then the issue would be clear.

DELEGATE NUTTING: Mr. Harper --

CHAIRMAN GRAYBILL: Mr. Nutting.

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DELEGATE NUTTING: I would have no objection if somebody could simplify these words. This is the best thing I could come up with in thirty seconds.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: To make the issue clear to us, may I move to amend Mr. Nutting's addition simply by, on line seventeen, after the words, property tax exemptions, to begin the sentence by saying: All property shall be taxed except -- and then make that a lower case "t" and go right on with the way section five is drawn in the majority proposal.

CHAIRMAN GRAYBILL: Very well, your substitute motion of Mr. Nutting's motion is accepted for debate. Mr. Harper has now made a substitute motion that section five begin by the sentence: All property shall be taxed except -- and then go on -- the property of the United States, the state, county, and so forth. Is there discussion?

Mr. Davis.

DELEGATE DAVIS: Mr. President, will Mr. McDonough yield to a question?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes.

DELEGATE DAVIS: Mr. McDonough, in the language that has now been modified a little that Mr. Nutting put in, was in our original Constitution, we thereafter had a constitutional amendment, did we not, to allow us to put on the income tax?

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DELEGATE McDONOUGH: Well, as I understand the income tax, the court did say that the income tax was constitutional about the same time they levied it and made the -- I mean, about the same time they made the amendment. What I hate -- I see Mr. Harper removed the uniformity clause, which I think should be out of there. I really don't think that this amendment is needed. It's clear like it is. I have the same objection, maybe, to Mr. Nutting's amendment as he had to mine so I don't think it really clears anything up one way or the other.

DELEGATE DAVIS: Would you yield to another question?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE DAVIS: Does section one give authority to levy this property tax?

DELEGATE McDONOUGH: The state has -- the legislature has the inherent power to tax. It doesn't have to give it to them.

DELEGATE DAVIS: They also have the inherent power for income tax?

DELEGATE McDONOUGH: Yes, they do.

DELEGATE DAVIS: Do they have the inherent power for sales tax?

DELEGATE McDONOUGH: Yes, they do.

DELEGATE DAVIS: Thank you.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I resist the motion.

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I thought we sort of had that cleared up when we went through our section one where we say, taxes shall be levied by general laws for public purposes. I think the real meaning for this is, it just doesn't seem to be in Mr. Nutting's mind the need for the exemptions. However, if we do this, of course, there would have to be a lot of exemptions if you want to go down that way and I think that we're really asking for a lot of trouble if we do that. We'd have a very involved plan because he apparently didn't want to accept McDonough's reason for having section five and he admits that maybe we don't need it because we say nothing is taxed, we could go the other way. On the other hand, I think Mr. McDonough's explanation is reasonable that we do set some things because there have been some court rulings on that and I think we keep it. I resist the amendment.

CHAIRMAN GRAYBILL: Mr. Anderson.

DELEGATE OSCAR ANDERSON: Would Mr. McDonough yield to a question?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE OSCAR ANDERSON: I have a non-legal mind, but when you say certain classes of property may be exempt from taxation, could anybody interpret that to be otherwise than saying unless it's specifically exempted by being exempt from taxation, it would cover all classes of property? Is that correct, or incorrect?

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DELEGATE McDONOUGH: I'm sure when the legislature draws the revenue measure, they'll certainly say what's taxable under that revenue measure, and they can say it as easy as we can say it here. They can say all property shall be taxed. I don't think the legislature will have any problem defining what is to be taxed. Is that what you mean?

DELEGATE OSCAR ANDERSON: (Inaudible. Microphone not turned on.)

CHAIRMAN GRAYBILL: Well, that's your answer anyway, whether it's what he means or not. Is there other discussion?

(No response)

CHAIRMAN GRAYBILL: If not, the issue is on Mr. Harper's amendment. Do you feel it necessary to close, Mr. Harper?

DELEGATE HARPER: Except to say that I was simply trying to clarify what I think Dick Nutting is saying and not expressing my own opinion. I think it would be better left out, so I'm going to vote against this suggestion.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Harper's substitute amendment that section five begin with the phrase: All property shall be taxed except the property of the United States, et cetera. So many as shall be in favor of Mr. Harper's proposal, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

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CHAIRMAN GRAYBILL: All right, it's defeated. We're now back on Mr. Nutting's proposal, which is to add the first sentence from the old -- from the present Constitution so it reads: The necessary revenue for the support and maintenance of the state shall be provided by the legislative assembly, which shall levy a uniform rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, except that specifically provided for in this article -- then going on to say the property of the United States, et cetera. Is there further discussion on that?

(No response)

CHAIRMAN GRAYBILL: Mr. Nutting, do you wish to close?

DELEGATE NUTTING: Mr. Chairman, with friends like George, who needs enemies?

(Laughter)

DELEGATE NUTTING: I think the overwhelming support I got on the last vote would demonstrate what's happened here. I withdraw my motion.

CHAIRMAN GRAYBILL: Very well, Mr. Nutting has withdrawn his amendment and we are back to section five without amendments. Is there further discussion?

(No response)

CHAIRMAN GRAYBILL: If not, members of the committee

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you have before you for your consideration, upon the motion of Mr. Rygg, chairman of the Revenue and Finance Committee, that when this committee does arise and report, after having had under consideration section five of the revenue and finance article, that we recommend the same be adopted.

DELEGATE KAMHOOT: Roll call vote.

CHAIRMAN GRAYBILL: There's a roll call vote called for. So many as shall be in favor of that motion, please vote Aye on the voting machines, and so many as are opposed, please vote No. Have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the ballot.

Aasheim	-	Aye	Bates	-	Aye
Anderson, J.	-	Aye	Belcher	-	Aye
Anderson, O.	-	Aye	Berg	-	Aye
Arbanas	-	Aye	Berthelson	-	Aye
Arness	-	Excused	Blaylock	-	Aye
Aronow	-	Nay	Blend	-	Aye
Artz	-	Nay	Bowman	-	Aye
Ask	-	Aye	Brazier	-	Aye
Babcock	-	Aye	Brown	-	Aye
Barnard	-	Aye	Bugbee	-	Aye

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1	Burkhardt	-	Aye	Harbaugh	-	Aye
2	Cain	-	Aye	Harlow	-	Aye
3	Campbell	-	Aye	Harper	-	Aye
4	Cate	-	Aye	Harrington	-	Aye
5	Champoux	-	Aye	Heliker	-	Aye
6	Choate	-	Absent	Holland	-	Excused
7	Conover	-	Aye	Jacobsen	-	Aye
8	Cross	-	Aye	James	-	Aye
9	Dahood	-	Absent	Johnson	-	Aye
10	Davis	-	Absent	Joyce	-	Aye
11	Delaney	-	Absent	Kamhoot	-	Nay
12	Driscoll	-	Aye	Kelleher	-	Absent
13	Drum	-	Aye	Leuthold	-	Absent
14	Eck	-	Aye	Loendorf	-	Aye
15	Erdmann	-	Absent	Lorello	-	Aye
16	Eskildsen	-	Nay	Mahoney	-	Nay
17	Etchart	-	Nay	Mansfield	-	Nay
18	Felt	-	Absent	Martin	-	Aye
19	Foster	-	Aye	McCarvel	-	Aye
20	Furlong	-	Aye	McDonough	-	Aye
21	Garlington	-	Aye	McKeon	-	Aye
22	Gysler	-	Nay	McNeil	-	Aye
23	Habedank	-	Absent	Melvin	-	Aye
24	Hanson, R. S.	-	Aye	Monroe	-	Aye
25	Hanson, R.	-	Absent	Murray	-	Absent

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Noble	-	Aye	Skari	-	Aye
Nutting	-	Nay	Sparks	-	Aye
Payne	-	Excused	Speer	-	Aye
Pemberton	-	Aye	Studer	-	Absent
Rebal	-	Aye	Sullivan	-	Absent
Reichert	-	Aye	Swanberg	-	Aye
Robinson	-	Aye	Toole	-	Aye
Roeder	-	Aye	Van Buskirk	-	Aye
Rollins	-	Aye	Vermillion	-	Aye
Romney	-	Aye	Wagner	-	Aye
Rygg	-	Aye	Ward	-	Aye
Scanlin	-	Aye	Warden	-	Aye
Schiltz	-	Aye	Wilson	-	Absent
Siderius	-	Aye	Woodmansey	-	Aye
Simon	-	Aye	Mr. Chairman	-	Aye

CLERK HANSON: Mr. Chairman, seventy-four Delegates voting Aye, nine voting No.

CHAIRMAN GRAYBILL: Seventy-four Delegates having voted Aye, section five is adopted. Now, before we read section six, the Chair would like to call on Fred Martin, who has an introduction to make.

DELEGATE MARTIN: Mr. President, I should like to introduce a good friend, a former boss, a good governor and legislator, and an eighty-year-old busy Montanan, the Galloping Swede, Hugo Aronson.

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(Applause)

CHAIRMAN GRAYBILL: Mr. Aronson, we are certainly happy to have you with us here this afternoon and we appreciate your coming, and we hope you'll see we're working hard.

(Mr. Aronson spoke briefly to the Convention, congratulating them on their efforts, and wishing them success. Since he did not speak into a microphone continuously, his remarks were sufficiently inaudible to be transcribed faithfully and accurately.)

CHAIRMAN GRAYBILL: Thank you very much, Governor Aronson, and good afternoon.

Mr. Eskildsen.

DELEGATE ESKILDSEN: If there be no objection -- if there be no objections, let's recess until three forty-five.

CHAIRMAN GRAYBILL: The motion is to recess until three forty-five. All in favor say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: So ordered. The Ayes have it and so ordered.

(Committee in recess from 3:25 P.M. to 3:48 P.M.)

CHAIRMAN GRAYBILL: The committee will be in session.

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The committee will be in session. The Clerk will read section six.

CLERK HANSON: (Reading) Section six, Highway Earmark: Revenue, except from general sales and use taxes, from excise and license taxation on gasoline, fuel and other energy sources derived as a result of the propulsion of vehicles on public highways, and gross vehicle weight fees, shall be used solely for the payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads and bridges and for county, city and town obligations on streets, roads and bridges, after the deduction of funds for enforcement of highway safety, driver education, tourist promotion and for administrative and collection costs as authorized by the legislative assembly. By a three-fifths vote of the members of each house of the legislative assembly or by initiated measure approved by a majority of the electorate, such dedicated funds may be appropriated for other purposes. (End reading) Mr. Chairman, section six.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration section six of proposal seven, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

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DELEGATE RYGG: This, of course, is the article which we had probably more testimony on than anything else. The committee did change this from the original 1 (b). We changed it in the revenue by deleting some of the other revenues and leaving just the gas and diesel fuel tax and the gross vehicle weight tax. I suppose we decreased it, roughly, about two plus million dollars. Then, going down, we did change it enough to make it definitely legal for the cities and towns to get the one cent they have already been getting and use it for county, city or town streets, roads and bridges. Then, we did allow the highway patrol to be paid from this fund. Apparently there is a test case we have now, but we did in our committee decide that this should come from this money. We did allow for some driver education and we maintained the allowance for tourist promotion which has already been used. Now, probably the biggest change in here was that we, in the last sentence it does say, by a three-fifths vote of the members of each house, such deducated funds may be appropriated for other purposes. I don't believe I'm going to read the comments of our rationale. I think you've all read them. I think I will omit giving you exact figures on revenues and expenses at the moment because I feel we have something bigger than this that we are arguing about. I think maybe there are three factions, should we say, concerning this proposal. First, I think we have those who really don't approve of earmarking in any form for any purpose.

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In a way, these people are idealists but they are sincere and we respect their opinion. I have thought they might want to delete this section but so far I haven't seen an amendment like that on the desk. Then there is the other group who would like to retain the anti-diversion amendment as it presently is in section one (b). Now, this group probably isn't as idealistic as the first group. They want to make sure they retain what they presently have so they can continue the highway program and other programs that go along with it, and we respect their opinion. It has been rumored that this group wants all or nothing and would attempt to have the new Constitution voted down if they had to make a concession. I refuse to believe this. Then we have the third group, the ones who would want to support our committee proposal which we think is a practical approach. Some of us on the committee, too, might like to have had no earmarking but we want Montana to progress and for that we need highways. We don't want to interrupt the program of being assured of having money available for matching federal funds. We know this is planned several years in advance and we don't want to upset the apple cart. We are willing to make some concessions in order to save our highways and to save our new Constitution. We would like to have these other groups agree to compromise. Now, actually, I have no idea on how things will go on this floor this afternoon. I had thought that perhaps there would be an amendment here to kill our pro-

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posal and if that were the case, I would hope you would override it and leave us still with our proposal. Then, I had probably thought, and there is an amendment which is the original one (b), so I suppose perhaps that will be first up if the other one isn't forthcoming. And I would hope there, too, that that one would fail. Then I would hope that we would have the opportunity of maybe discussing our own proposal in a little more detail and hoping that you would agree with us that this probably is the best route for Montana to take and that you would put it through as a regular proposal. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, I hate to take the plunge into this extremely sensitive subject. Several Delegates have gotten up and said this is the most important thing to come before the Convention. Now it's my turn. I say this, if not the most important, is certainly the most sensitive thing to come before this Convention. I've thought about it many times, laid awake at night. Over the years, I've had a lot of experience with the Montana highway program in one capacity or another, and in 1955 and 1956, I supported the anti-diversion amendment in the legislature, but over the years, as I have observed the highway department operating, I have gradually changed my mind and now I oppose it strenuously. I think we are beginning to create a great evil, and that this Convention

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must address itself to that problem. We are force-feeding, Mr. Chairman, to the highway department thirty-eight million dollars a year. We have created an independent, unresponsive, gigantic bureaucracy, not responsible to the people, not responsible to the legislature, and without control. We all know of the unnecessary roads that have been built; we know of emergency situations that have been neglected; we know of the indifference with which the highway department regards matters of ecology, stream diversion, the game crossings. We know the highway department has yielded to special interests in the construction of highways, but we go on force-feeding them the thirty-eight million dollars, locking it into our Constitution. Now, I recognize the popularity of this amendment that passed in 1956 by a vote of a hundred and sixty thousand to forty-eight thousand. I have in my files here the names of the supporters, the organizations, and there are eighteen powerful business groups, eighteen -- ten large labor unions, including the AFL-CIO. I won't read the list unless the Convention so desires, but I submit to you, Mr. Chairman, that this popularity is beginning to wane as people become disaffected with the activities of the highway department. I think that the committee has done an admirable job in meeting the problem head-on. As Mr. Rygg stated, they couldn't eliminate it because of its popularity and because of the endangering -- because it would endanger -- because, in my opinion, it would cause extreme

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danger to the ratification of the Constitution. The fund is still earmarked, but three-fifths of the legislature can vote to bring these funds back under legislative control. I think it's a bold and innovative approach to the problem. Our interstate system is nearing completion, although it has been delayed. Our secondary and primary systems are coming up to standards. There is still much work to be done and I submit to you, if this report is adopted, that work will continue. We're not going to abandon the Montana highway program. I just think it is time for another look. Should we continue to lock in these vast millions with changing attitudes, changing needs. Attitudes toward the automobile are changing, and its use. The automobile is beginning to create vast social and economic problems. There's a desperate need in some of our communities for adequate mass transportation systems which the communities are unable to finance. It may be that at some time in the future it will be more practical and less expensive to have a monorail running between here and Great Falls. Should we prevent the development of such technology by locking this in forever and constantly force-feeding this money into the construction of more and more highways without regard for the advances in technology which may change the need for those highways. We go on feeding an ever growing, unresponsive agency. We should open the door. We should allow, then, for future changes and we should reclaim this money for the people. I recognize

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that this thirty-eight million dollars brings in sixty to seventy million dollars of federal funds. This is a very knotty problem, but the federal highway trust fund itself is now under attack and there are many serious suggestions for the diversion of monies from the federal highway trust fund to the mass transit problems of the cities of the east and west coasts. I think we should seize our own destiny and not become the victims of a force-feed on us by the federal government in matching funds. I know the argument that if we give the money back to the legislature that the legislature will fritter them away in their desperate need for funds; that they'll spend them on relief; that they'll spend them on schools. They might want to subsidize mass transportation in Billings, Great Falls, Missoula, Helena or Butte. In my opinion, the legislature should be permitted to do so; if they want to use gas tax money for schools, for mass transportation, for welfare, they should be permitted to do so. I am going to conclude my remarks now on this subject, Mr. Chairman. Later on, I might have an alternative to present. I think it is necessary that we present an alternative on the ballot, and as of this moment I don't know what that alternative will be, and I want to hear the debate and then I hope to present to the Convention some sort of an alternative so that the people on this issue will have a chance to vote in a rather clear cut way on two clear cut decisions. Thank you, Mr. Chairman. I support the committee report.

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CHAIRMAN GRAYBILL: Is there other discussion of section six?

(No response)

CHAIRMAN GRAYBILL: Very well, members of the committee you have before you, on the recommendation of Mr. Rygg, that when this committee does arise and report after having under consideration section six of the revenue and finance proposal, that it recommend the same do pass.

Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, I'm amazed that we're about to vote on this thing and there has been no more discussion than what Mr. Toole did and we're about to take a vote.

(Laughter)

DELEGATE ARONOW: Now, it may be very laudable for Mr. Toole to want to subsidize mass transportation in Great Falls, Billings or Missoula, or wherever. I can't say I want to pay gasoline taxes to subsidize the mass transportation in those areas. We don't happen to need mass transportation in Shelby, Montana, and I'd just as soon stay out of Great Falls, Billings and Missoula, and I find that along the northern part of the state of Montana about everything that I want. And, I think this is a terrible thing if we are just going to go vote on the committee -- the proposal, without any discussion. We are changing an amendment that was passed by the people of the state of Montana not so long ago. I'm not so sure that if the

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highway department is not responsive to the needs of the people and it's pretty autocratic, I'll admit, and that maybe we ought to do away with the gasoline tax. Maybe we ought to reduce the amount, but I don't think we ought to leave it up to the legislature on a matter that has been voted on by the people. I'd like to hear a little more discussion on this matter.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, a point of order. Am I committed to vote for something if I make an amendment?

CHAIRMAN GRAYBILL: No, you can vote as you please.

DELEGATE SCANLIN: O.K. Mr. Chairman, in order to follow the rules of procedure and get some debate on this very important subject, I would like to move, Mr. Chairman, to delete section seven of the committee proposal and substitute section one (b) of article twelve of the present Constitution of the state of Montana.

CHAIRMAN GRAYBILL: Mr. Scanlin, do you have section one (b) written out for the Chair?

DELEGATS SCANLIN: Yes, I do, sir. I think everybody has a copy of it.

CHAIRMAN GRAYBILL: All right, is this unsigned amendment yours? Anti-diversions amendment, it says at the top of the page -- is that yours?

DELEGATE SCANLIN: Section six. Mr. Chairman, I may have made a mistake. It's section six of the proposed article.

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CHAIRMAN GRAYBILL: Right.

DELEGATE SCANLIN: Committee proposal.

CHAIRMAN GRAYBILL: The Chair understands that Mr. Scanlin has offered an amendment which is unsigned, but we'll put his name on it, on your desks, and his amendment would delete section six of the committee report and substitute therefor section one (b) of the old -- or the language from the existing article twelve, one (b), of the Constitution, so Mr. Scanlin's amendment is to delete section six in its entirety and substitute therefor article twelve, section one (b) language from the present Constitution.

Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, I'd yield to anybody who would like to speak on this subject.

CHAIRMAN GRAYBILL: Very well, the Chair accepts Mr. Scanlin's amendment for discussion.

Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, I hesitate but I must acknowledge that one (b) is partially my baby. It so happened that in 1955 when this was before the legislature for consideration, I happened to be down in the governor's office and was sent up here to lobby on behalf of the passage of this through the house and almost was placed in contempt of the house for buttonholing delegates at that time. At the time, certainly there was a desperate need for this sort of funds to build the

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highways with the interstate coming on and the program which developing and certainly it wasn't intended that the highway department would become as far from the people as it has since gotten to be, and still we haven't got the interstate completed and there certainly is need, and I'm hopeful that before we divert all this money away from the highway department that we at least build the -- complete the Bozeman hill between Livingston and Bozeman. I think that the committee has put some flexibility in this program and I would resist the substitute motion.

CHAIRMAN GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, I rise to resist the substitute motion made by Mr. Scanlin because I'm one of the idealists who wish we would get rid of the whole thing, but I've been here long enough to realize that that is not possible. However, I would like to quote very briefly from a report made by the Montana legislative council in 1962, entitled State Treasury Funds Structure. It says: As a means of allocating resources, earmarking is inefficient because it fails to recognize relativity of needs. Resources are distributed not by a conscious evaluation of the needs of all agencies but by an arbitrary constitutional and statutory formula. A dedicated revenue tends to create a vested interest in continuing arrangements, which experience and passage of time may prove to be contrary to the public interest, and I submit this is painfully apparent as far as the highway department is concerned. Going

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on: Even if there be at first a proper relation between the proceeds of a given tax and a need for expenditure for a given service, there is no reason to assume that the relationship will continue to exist. Experience demonstrates that once a dedicated fund has been set up, it is extremely difficult to deal with on its merits. I would like to comment on Mr. Aronow's statement that he did not feel that mass transit was necessary in Shelby. I think that his funneling of his gas tax money into a possible mass transit system between Helena and Great Falls is no different than the people in Nebraska whose tax money is funneled into the state of Montana in the federal highway fund. It's somebody else's money paying for our roads. I think that the two are comparable. I think that Parkinson's law, which says that expenditures rise to meet income, could be paraphrased to say, congestion arises to meet highway capacity. The highway department is a self-perpetuating bureaucracy and will continue to be so as long as it continues to be locked in the way it is at this point. I think that the committee has worked out a reasonable compromise. I think it allows for flexibility should the time come when maybe we will need some mass transit in Montana. I realize that it's hard to visualize that now but we're not writing this Constitution for now. Therefore, I urge that you reject Mr. Scanlin's substitute motion and vote for the committee proposal. Thank you, Mr. Chairman.

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CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, would I be out of order at this time to ask a member of the committee a question with regard to section six?

CHAIRMAN GRAYBILL: No, I think not. This is a general debate of the problem.

DELEGATE MELVIN: Well, I notice that the committee has allowed for the payment of highway patrolmen's salaries and driver education, and apparently have cut down on the fees from the gross vehicle weight and registration and sale of new cars. Has any member of the committee any estimate as to the difference in the income that this would make in regard to highway construction?

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I believe that Mr. Furlong has those figures. I think the revenue was cut down about two plus million dollars and I think maybe Mr. Furlong has the figures.

CHAIRMAN GRAYBILL: Do you, Mr. Furlong?

DELEGATE FURLONG: Mr. Chairman, I'll try. Actually, when we started looking for figures, so much of the monies were put into one fund that it was almost impossible to unscramble them, but as nearly as our research indicates, the amount of monies that would have been taken out -- will be taken out if you accept section six will be slightly in excess of two million dollars.

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DELEGATE MELVIN: Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: While I'm on my feet, I might -- the -- for the benefit of the people, I think the question will probably come up anyhow, and I just may save a little time by doing this. The highway safety, or the patrol, which is currently listed, is around three, three and a quarter million dollars. The driver's education, which is under the present program -- I think the latest figure the state has, it's costing on the basis of some incomplete returns from all of the schools participating, would be about seventy-two dollars per child. The total program would cost somewhere around seven hundred and fifty thousand dollars. Really, those are the only monies disturbed by the first section of section six. The only other disturbance that could be created would be the three-fifths vote which would authorize the legislature to divert, or the initiative amendment. I think that those are really the only figures involved in the section. I hope that answers your question.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President, I am in sympathy with what Mr. Toole said about the highway department and I realize that we have quite a problem there, but I also realize that we do have a lot of problems with roads in Montana yet. We have a lot of secondary roads that certainly need improve-

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ment--many hundreds of miles of them. We have many hundreds of miles in our state highways that need improvement and we need this money to do that with. I think that if some provision was made in here that the legislature may review the activities of the highway department, I would have no objection to it, but I feel this way, that until such a time as we no longer have need for building our highways and improving our road system, that this money should be used for this purpose. And when we feel that we should divert these funds, or remove them, then I want to have a different clause. I want to know what these monies are going to be diverted for. We are paying a tremendous tax on gasoline to build our roads and if we are going to build roads with that money, let's build roads with it. But, if we are going to permit the legislature, by a three-fifths vote, to divert these funds for some other purpose, then I think it's an option that the people should have a chance to vote on. I suggest that the last sentence of this paragraph should be removed for this reason--that if and when we think that we should not necessarily need this tax on gasoline to build roads, if we think we want to do it -- put the tax on for some other purpose, then the people should be able to decide what purpose we are going to use this money for and not have the legislature merely to divert the money to some other use without the knowledge of what we are going to do with it. I would move, Mr. President, that the last sentence in section six of the major-

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ity proposal be stricken.

CHAIRMAN GRAYBILL: Mr. Wilson, you are out of order. The motion at the moment is Mr. Scanlin's motion to delete section six and substitute one (b). Therefore, the issue before the house is one (b) and you can't amend something that isn't before us, but I'll be sure you have a chance later on to do that if we ever get back to section six.

DELEGATE WILSON: Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, would Mr. Scanlin yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Scanlin?

DELEGATE SCANLIN: Happy to.

DELEGATE REICHERT: Mr. Scanlin, during the last session of the legislature, Senate Bill number ninety-nine was passed in both houses, it was signed by the governor, but even before the ink was dried, its constitutionality was questioned. This is a bill that would have enabled us to save about three and a quarter million dollars because the highway patrol money would have been paid from the highway department funds rather than from the general fund. Do you feel -- and this is because of our present Constitution, the section you just recommended we adopt, section one (b) -- do you feel that this is justifiable that we should retain this old section that we may not pay highway patrolmen with highway department funds?

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CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, Mrs. Reichert, my intelligence is no match for yours. I have no answer.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, will Mr. Furlong yield to a question?

CHAIRMAN GRAYBILL: Mr. Furlong?

DELEGATE FURLONG: Yes.

DELEGATE HABEDANK: Mr. Furlong, did I understand your figures correctly, that taking out the excise and license taxes and these other things--gross vehicle weight--would reduce the income to the highway fund approximately two million dollars?

DELEGATE FURLONG: No, those are not being taken out. Those are being left in.

DELEGATE HABEDANK: So there is no reduction of that two million dollars under the proposed measure?

DELEGATE FURLONG: No, the two million dollars I'm talking about would be basically -- I have the figures here. The new car sales tax is what it really is and it's about one million, one hundred and ninety-two thousand dollars, and there are some minor other fees which are all put together under what is known as gross vehicle weight. It has nothing to do with the figures you're reading. I'm referring to the first word, revenue.

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DELEGATE HABEDANK: Mr. Chairman, may I ask a series of questions?

CHAIRMAN GRAYBILL: You may.

DELEGATE HABEDANK: Just so I understand -- regardless of from where it comes, the revenue under your proposed section six over the revenue that goes into the highway fund in section one (b), would be approximately two million dollars less.

DELEGATE FURLONG: That's right.

DELEGATE HABEDANK: Then we would add to the expense that you put into section six that is not presently covered in section one (b), driver education, which you estimate at seven hundred and fifty thousand dollars --

DELEGATE FURLONG: That's right.

DELEGATE HABEDANK: -- and then you add the cost to the highway patrol, three and a quarter million dollars, which is not presently covered by one (b).

DELEGATE FURLONG: No, it is presently covered by one (b). It's being paid right now. It's under --

DELEGATE HABEDANK: Out of the -- the highway patrol is presently being paid out of highway revenues that --

DELEGATE FURLONG: That's right. I understand that there is a supreme court test case on its legality right now.

DELEGATE HABEDANK: If that case -- it's held that that can't be done, then there would be an additional three million, three and a quarter million that would be paid defin-

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itely as provided in your section six?

DELEGATE FURLONG: If I understand the question, if it's held unconstitutional under the old Constitution, and section six is approved in the new one, then it would be legal. It would be three and a quarter million dollars, yes.

DELEGATE HABEDANK: So, the total difference, or possible difference at the present time of revenue to the highway fund for highway development purposes, under your proposed section six and section one (b), assuming that the supreme court holds that the highway patrol cannot be paid out of those funds, would be about six million dollars less annually?

DELEGATE FURLONG: Yes, something like that.

DELEGATE HABEDANK: Thank you. That's annually or biennially?

DELEGATE FURLONG: Now you've thrown me a curve. I'm not sure. No, I think these figures would represent annual income. It happens to be a biennial budget, but --

DELEGATE HABEDANK: Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Would -- Mr. President, would Mrs. Reichert yield to a question?

CHAIRMAN GRAYBILL: Mrs. Reichert, will you yield?

DELEGATE REICHERT: Yes.

DELEGATE DAVIS: Tell me about the three million. I got lost on that -- that we lost.

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DELEGATE REICHERT: Because, if the supreme court rules upon the constitutionality of this, we will have lost three and a quarter million dollars. I thought it was a biennium, perhaps I'm wrong, because the money will have to be taken from the general fund. The constitutionality was questioned before. It was even introduced in the senate. I talked to Mr. Chittim about it because I was covering that session, and I asked him, and he said -- he showed me legal proof that it was unconstitutional before it got through the senate, before it got through the house, before the governor signed it, and so, that's why I favor the majority proposal. I feel that we must have this ability.

DELEGATE DAVIS: Would Mrs. Reichert yield to another question?

DELEGATE REICHERT: Yes.

DELEGATE DAVIS: Well, where did the three and a half million go? That's what I'm puzzled about.

DELEGATE REICHERT: Well, it would have to be taken from the general fund if we can't pay it from the highway department, if it's unconstitutional.

DELEGATE DAVIS: But, if it stays in the highway department, it will still go -- we'll still have it in one fund or the other, won't we?

DELEGATE REICHERT: But, the problem is, we have control of the general fund. We have no control over the highway

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department fund. I think that's the critical issue.

DELEGATE DAVIS: Thank you.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman, I think there's a little confusion here. The appropriations are generally made on a biennial basis and the income is generally figured on an annual basis, so the three and a half million, I think, is a biennial appropriation and this other money here would be an annual situation. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman, I would rise to oppose the substitute motion. I would like to just make a couple of brief comments to answer some of the statements that have been made and some questions that have been left, perhaps, in the mind of this body. First, I would like to again reiterate the oneness of the committee in their desire to come up with something that would treat all parties fairly, and we had a good deal of -- a lot of testimony, and we had more than discussion. I would even call it some pressure in some cases for us to either delete completely or to leave as is, because people feel pretty sincerely about this, and our picking of the figure three-fifths of the vote of the legislative body was done, not necessarily to hang a hammer over the head of the highway department, because we all recognize that the highway department has done an awful lot of good things for the state of Montana.

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When you get big, you get a little bit inefficient and you hurt a lot of people's feelings, maybe, but at the same time, the highway department in their overall effort has been a real credit to the state of Montana. However, as the income from these various contributions grows each year and it appears to us the figure is going up somewhere in the range of two and a half to three million dollars per year, as we look down the road maybe twenty years hence, if the income from the sale of gasoline or from the gasoline tax and these other sources of income -- say, pick an average figure over the next twenty years of three million dollars, that would add to the thirty-eight million that will come in this year another sixty million dollars, so we are talking about somewhere in the neighborhood of ninety to a hundred million dollars coming into the highway department. One of our concerns was that down the road somewhere we are going to have federal highways fairly well crisscrossing our state. It may not be five years; it may not be ten; it may not be forty, but at some point in the future the construction of federal highways probably is going to be diminished somewhat from where it is now, and at that point, and for Mr. Wilson's edification and clarification, we want to be able to divert money into the building of county roads and city streets. Now, we also want to be able to do this, or want the legislature to be able to do this at an early time. Some of us served as legislators and we remember how difficult it

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was for the legislature to come up with some money to help the cities back in the 1967 session. It was a real problem as to where the money was to come from. There were some questions as to the constitutionality of whatever happened, but about a million dollars was arranged after working around some agreements and some late night sessions, and one thing or another -- would be channeled back to the cities to help in their street programs. This will become more and more of a problem for the cities and the counties because, one, more traffic and, two, the -- some of the state highways are going to become county roads in the future. Now, if the responsiveness of the highway department is sharpened a little bit when they look at that three-fifths, or sixty percent figure, it could be one of the real blessings that the legislature finds themselves blessed with in the years to come because if there's no possibility of changing this diversion, other than another constitutional amendment, the responsiveness may be a very difficult to find commodity. Something like bird droppings in a cuckoo clock, they just may not be around --

(Laughter)

DELEGATE DRUM: -- so the three-fifths will make the highway department very responsive. Now, if what the proponents for a hundred percent diversion say is true, the highway department has nothing to worry about. All they have to do is perform in a fashion that the proponents of the anti-diversion

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measure say they are going to and we'll have no problem. However, if they do not perform in this fashion, at some point they will have to come to the legislature and worry about their share, or the way their money is being handled. Another point that didn't come up and I think is one that should be mentioned is it takes about fourteen million dollars, as I understand, to obtain the federal matching money so our committee didn't feel we were jeopardizing our federal matching funds by any action that we took in writing this, what we thought to be a good compromise article, and I would urge your support of the majority report. Thank you very much.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Scanlin's motion to amend section six by deleting it and substituting section one (b). Mr. Scanlin, do you want to close?

DELEGATE SCANLIN: Thank you, Mr. Chairman. Several years ago, in another political campaign, it was my responsibility to see why it was that the city of Billings was filled with chuck holes and the people of ward five were putting one million dollars a year in taxes into highway diversion funds and not one cent at that time was returning to the city of Billings. Seventy-five percent of the driving, the consumption of the gasoline on which those taxes were paid, were used in that area, and inquiring from the bureau of public roads, Senator Metcalf and the highway department of the state of Mon-

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tana, I received at least ten pounds of material and no satisfaction. Since that time there has been a change of heart and, Mr. Chairman, I wish to withdraw my amendment.

CHAIRMAN GRAYBILL: Mr. Scanlin, you've withdrawn your amendment.

Mr. Foster.

DELEGATE FOSTER: Mr. President, fellow Delegates, I think Mr. Scanlin made his motion for a very good reason, for debate, and I would like to renew the motion and ask for a roll call vote.

CHAIRMAN GRAYBILL: Very well, Mr. Foster renews Mr. Scanlin's motion and asks for a roll call vote. So many as shall be -- first of all, I should say that the sense of the amendment is to put section one (b) from the existing Constitution, the anti-diversion amendment, into the new Constitution in place of section six, as proposed by the committee. So many as shall be in favor of that motion, vote Aye, and so many as shall be opposed, vote No. Has every Delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Close the ballot and take the ballot, please.

Aasheim - Aye Anderson, J. - Aye

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1	Anderson, O.	-	Nay	Cross	-	Nay
2	Arbanas	-	Nay	Dahood	-	Absent
3	Arness	-	Excused	Davis	-	Nay
4	Aronow	-	Aye	Delaney	-	Aye
5	Artz	-	Nay	Driscoll	-	Nay
6	Ask	-	Nay	Drum	-	Nay
7	Babcock	-	Aye	Eck	-	Nay
8	Barnard	-	Aye	Erdmann	-	Nay
9	Bates	-	Absent	Eskildsen	-	Absent
10	Belcher	-	Absent	Etchart	-	Aye
11	Berg	-	Nay	Felt	-	Absent
12	Berthelson	-	Nay	Foster	-	Nay
13	Blaylock	-	Nay	Furlong	-	Nay
14	Blend	-	Nay	Garlington	-	Nay
15	Bowman	-	Nay	Gysler	-	Nay
16	Brazier	-	Nay	Habedank	-	Nay
17	Brown	-	Nay	Hanson, R. S.	-	Nay
18	Bugbee	-	Nay	Hanson, R.	-	Nay
19	Burkhardt	-	Nay	Harbaugh	-	Nay
20	Cain	-	Nay	Harlow	-	Nay
21	Campbell	-	Nay	Harper	-	Nay
22	Cate	-	Absent	Harrington	-	Nay
23	Champoux	-	Nay	Heliker	-	Nay
24	Choate	-	Nay	Holland	-	Excused
25	Conover	-	Nay	Jacobsen	-	Nay

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1	James	-	Nay	Robinson	-	Nay
2	Johnson	-	Aye	Roeder	-	Nay
3	Joyce	-	Nay	Rollins	-	Nay
4	Kamhoot	-	Nay	Romney	-	Aye
5	Kelleher	-	Absent	Rygg	-	Nay
6	Leuthold	-	Nay	Scanlin	-	Nay
7	Loendorf	-	Nay	Schiltz	-	Nay
8	Lorello	-	Nay	Siderius	-	Nay
9	Mahoney	-	Aye	Simon	-	Nay
10	Mansfield	-	Aye	Skari	-	Nay
11	Martin	-	Nay	Sparks	-	Aye
12	McCarvel	-	Nay	Speer	-	Nay
13	McDonough	-	Nay	Studer	-	Aye
14	McKeon	-	Nay	Sullivan	-	Nay
15	McNeil	-	Nay	Swanberg	-	Absent
16	Melvin	-	Nay	Toole	-	Nay
17	Monroe	-	Nay	Van Buskirk	-	Nay
18	Murray	-	Aye	Vermillion	-	Nay
19	Noble	-	Nay	Wagner	-	Nay
20	Nutting	-	Aye	Ward	-	Nay
21	Payne	-	Excused	Warden	-	Nay
22	Pemberton	-	Aye	Wilson	-	Aye
23	Rebal	-	Nay	Woodmansey	-	Nay
24	Reichert	-	Nay	Mr. Chairman	-	Nay

25 CLERK HANSON: Mr. Chairman, seventeen Delegates

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voting Aye, seventy-two voting No.

CHAIRMAN GRAYBILL: Seventy-two Delegates having voted No and seventeen having voted Aye, the amendment is defeated. The issue, then, is on section six as shown on page twelve of the revenue and finance proposal. The committee has moved -- the majority has moved section six. Is there further debate?

Mr. Aasheim.

DELEGATE AASHEIM: Will Mr. Drum yield to a question?

DELEGATE DRUM: I yield, Mr. Aasheim.

DELEGATE AASHEIM: I don't know why I picked on you--

DELEGATE DRUM: Please don't, then.

DELEGATE AASHEIM: I'm just wanting to ask a question here. You have said that monies may be used for highway safety, driver education, tourist promotion, and for administrative and collection costs, as authorized by the legislative assembly. May I ask why you think the highway money should be used for driver education?

DELEGATE DRUM: I think, Mr. Aasheim, that we heard sufficient testimony that felt that the origination of the funds coming from this source should be directed to probably the safety, future safety on the highways and I think the safety, including the patrol situation, as well as the safety of the people who learn to drive at a young age and become better drivers was probably considered at the same time. I think it came as a result of testimony and I don't remember that it was

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really debated or discussed in detail. Perhaps other members of the committee have a different recollection than I.

DELEGATE AASHEIM: Thank you, Mr. Drum. I'm not an attorney and I'm not going to put you on the spot, but I'm going to put myself on the spot. In 1965, I was the author of House Bills 91 and 92, which introduced the driver education program in the state of Montana, and I have been very conscious, I have been very concerned about driver education ever since that time. It's a very nice sounding, it's a very altruistic sounding proposition. Driver education is good; there's no doubt about it, and I fought very diligently and very hard to introduce that -- those two bills, and we got them through, and the idea was at that time that we were to help with driver education but that this was sort of a self-help program, that the individuals who wanted it were to go out and help pay for it because it was going to cost a lot of money to do it properly. And, since that time, I have been concerned about safety on the highways and I have found that the greatest promotion towards safety on the highways is good highways. The better your highways, the fewer your accidents. You just look at the interstate system and I think you'll find that the fatality rate is something like three and a half, depending on where it is; whereas, on other highways in Montana it's probably five to seven because it happens on the poor roads. Now, I have read a lot about driver's education and I can find you where driver's

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education is detrimental. Now, I don't believe it because I believe in education, but I can foresee a body like this, when they get appeals for money for driver's education, they'll say, well, there's a lot of money here, we'll just take it out; it sounds good. We'll send it back out in the country because it's good political philosophy. It will get me votes, and in the meantime, we're taking money out of a fund to build better highways, and that's what Montana needs. And, I believe that if we want driver's education to mean something, let's let them pay for it themselves with the assistance of the local schools. Why make a plum out of this highway fund? Let's use it for building roads and maintenance of the roads. So, Mr. Chairman -- and, again, I'm going to be very unpopular -- I move to strike on line eleven, page twelve, driver education, not with the idea that I'm against driver's education because right now I can ask any one of you, and you can't answer me, what good is it doing? What good is it doing? All we can say subjectively, we think it's good. I went down to the highway patrol and said, what proof do we have that this is doing any good? Well, they can't answer me and I knew they couldn't. The records are still about the same as they were in '65, about the same number of fatalities. This is a nebulous thing. You can't pinpoint it. But, I believe, let this thing stay back home. Let the people dig up their own shekels and pay for this program. Let's not pick on the highway funds

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because I believe highway funds should be made for building highways.

CHAIRMAN GRAYBILL: Very well, Mr. Aasheim has amended line eleven of section six of the majority proposal by moving to delete the words, driver education. Is there discussion?

Mr. Berg.

DELEGATE BERG: Will Mr. Aasheim yield to a question?

DELEGATE AASHEIM: Yes, Mr. Berg.

DELEGATE BERG: When you promoted driver education did you do it as a matter of highway safety?

DELEGATE AASHEIM: I certainly did.

DELEGATE BERG: And, now, if you delete driver's education and leave in highway safety, have you really changed the situation?

DELEGATE AASHEIM: Well, highway safety in general is more -- is general. Driver's education is specific, and I would hate to take this general statement out, although it might be taken out.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, fellow Delegates, I rise in opposition to Mr. Aasheim's proposal. I think, in keeping with what has gone on around here, I should tell you that I teach driver's education. I'd also like to tell you I had nothing to do with putting it in here but I'm glad it's

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there. I would like the assembly to know, without trying to get really involved, that there are approximately thirty-three national studies that have been made on the effectiveness of driver education and out of the thirty-three national studies, thirty of them indicate that safety education and driver's training are, in fact, beneficial and that they probably save the people in the United States billions of dollars a year in reduced insurance rates for teenage drivers, in reduced loss of property and of life. Thank you.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I rise in opposition to the amendment. I'd just like to underline Mr. Furlong's reference to reduced insurance rates. This seems to be the best evidence on Mr. Aasheim's question. Insurance companies are pretty hard-headed in setting their rates and wouldn't give lower rates unless there was some benefit through driver's education.

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, I submit that the shekels for driver's education are coming from the people who are using it at this point. That's the part of that seven hundred and fifty thousand dollars. We are using the cars and the highways and the gasoline.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I rise in resist-

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ance to striking driver's education from this program. I would like to answer Mr. Aasheim's statement as to what proof we have, whether any of us know that it has done any good. I reared four children and when they took their driver's education, I paid, I believe, twenty or twenty-five dollars for it. My children benefited from it, but the children who did not have the twenty or twenty-five dollars from a parent who could afford to pay for it, needed that driver education as much or more than my children and those kids are getting out in cars and they're going up and down the streets and highways of this nation, and I think that the benefit my children derived is equally available under this program to those that are going to drive whether we educate them or not, and I would hope that the day would come that no child will be able to secure his driver's license until he has completed a driver's education course. When we make that mandatory, as we can do in this program, amply funded, I think we will make a great step forward for highway safety. I'm glad that Mr. Aasheim got this measure through in the first instance.

CHAIRMAN GRAYBILL: Mr. Anderson.

DELEGATE OSCAR ANDERSON: I rise in opposition to the Aasheim amendment, and I'm not worried about a bunch of driver education people coming in here and influencing the legislature. I have some figures ahead of me here. There are four hundred and four thousand, six hundred seventy-four people

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living in the various cities and towns in Montana and they got a million eight hundred thousand out of this fund last year, and they're going to be back, asking for more or at least that much. There is also a rural population of two hundred eighty-nine thousand, six hundred and eighty-one -- six hundred and seventy-one people and they got a million two hundred thousand dollars out of this fund last year, and they'll be able to be up there yelling for their share, too, and I think we can get proper balances in these people asking for these funds. Thank you.

CHAIRMAN GRAYBILL: Is there other discussion of Mr. Aasheim's amendment, or may he close? Mr. Aasheim, you may -- oh, Mrs. Bates.

DELEGATE BATES: Yes, Mr. Chairman. Just for a point of information, to my knowledge and understanding of the highway structure and the highway commission, that now the appropriations that come from all these funds are not under the jurisdiction of the legislature. Then, in looking at this section, I see that the word in line nine that says, after the deduction of the funds that are listed here for the administration and the appropriations, only after this is done then will the legislature, by a three-fifths vote of its members, be able to appropriate. Now, I don't know -- maybe I'm not reading this correctly, but I don't think the last three, or that last sentence has any place because I doubt that there will ever be

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any money left over and maybe I'm interpreting this wrong. Could someone clarify this entire section for me? Thank you.

CHAIRMAN GRAYBILL: Mr. Furlong, do you want to try?

DELEGATE FURLONG: Mr. Chairman, I'm not sure I can answer it. I have here a minor or small statement for the period of July first, 1970 through June thirty, 1971, that shows an ending balance as of 6/30/71 of nine and a quarter million dollars, and that's for one year, rather than the biennium.

DELEGATE BATES: (Inaudible. Microphone not turned on)

CHAIRMAN GRAYBILL: Just a minute, Mrs. Bates. If you want to ask another question, you stand up and get the Chair's permission.

DELEGATE BATES: Mr. Chairman, may I ask another question?

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Furlong, is this after the appropriations have been made out of the highway funds? This is the way I read it.

DELEGATE FURLONG: Yes, according to this record it is, under the existing article twelve, one (b).

DELEGATE BATES: Oh, then there would be some. O.K., thank you. That's what I --

CHAIRMAN GRAYBILL: Mr. Aasheim, you may close.

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DELEGATE AASHEIM: Will Mr. Furlong yield to a question?

CHAIRMAN GRAYBILL: Mr. Furlong, will you yield?

DELEGATE FURLONG: Yes.

DELEGATE AASHEIM: Mr. Furlong, there is no question in my mind about your ability as an instructor whether it's in the high school or as a driver. Were any students in your particular area denied driver's education?

DELEGATE FURLONG: Yes.

DELEGATE AASHEIM: Will Mr. Furlong yield to any further questions?

CHAIRMAN GRAYBILL: Mr. Furlong, do you want to yield again?

DELEGATE FURLONG: Yes.

DELEGATE AASHEIM: Of the percent who did not take driver's education, how many -- what percent of those as compared to those who did have driver's education, how many were involved in accidents?

DELEGATE FURLONG: Mr. Aasheim, I cannot answer that. I have no knowledge.

DELEGATE AASHEIM: Mr. Chairman, will he yield to another question?

CHAIRMAN GRAYBILL: Mr. Furlong?

DELEGATE FURLONG: Yes.

DELEGATE AASHEIM: If you can't answer that question,

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how do you know the driver's education program is what you say it is?

DELEGATE FURLONG: I will repeat again, Mr. Aasheim, that out of some thirty-three national figures -- national studies, thirty of them have indicated that driver's training is extremely beneficial. I'd rather quit using the word, driver's training, because I think it should include traffic safety education. It's not just piloting the car around. It includes safety education as well.

DELEGATE AASHEIM: Thank you. Delegates, I'm not arguing against driver's education. Naturally not. But, what I'm trying to tell you people is this should be a local project for one reason only, that in the process of doing it locally and impending upon financing it locally, you are becoming aware of the problem of driver's education. You are not only educating the youth, you are educating the adults. And, further, when you have a fund like this, and this is millions of dollars, don't you realize the weakness of a legislature to say, yes, let's just take it and hand it out? Let's just take it and hand it out. If we're not getting driver's education, we should get it. I sincerely believe that, but I don't believe we should dip into this fund to do it. I think you should leave that money for building highways, for building good highways, and when you have good highways you'll have less accidents.

CHAIRMAN GRAYBILL: Mr. Furlong.

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DELEGATE FURLONG: Mr. Chairman, I wanted to make one statement to Mr. Aasheim's closing statement. I really do not wish to finally get into an argument. It is not locally funded now. The driver's education program in the state of Montana is currently being paid for the poor guy on the highway that gets caught with a moving violation. A percentage of that money goes into a state fund and is reimbursed to the towns and cities and schools that offer driver education. We, in fact, have a state fund right now and it comes from a percentage of the moving traffic violations. Practically every school in the state is charging, as Mr. Habedank said, from twenty to twenty-five dollars per student out of -- they're not out of local funds, they're out of the individual parent's pocket. This could conceivably do just exactly what Mr. Habedank wanted-- provide, practically, driver's education for all Montana high school students.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Aasheim's amendment to section six, as proposed by the committee, on line eleven on page twelve. He wants to take out the words, driver's education.

DELEGATE CAMPBELL: I would like to ask for a roll call vote.

CHAIRMAN GRAYBILL: All right, we'll have a roll call vote. So many as are in favor of taking out driver's education vote Aye, and so many as are opposed, vote Nay. Have all the

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Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: We'll close the ballot.

Aasheim	-	Aye	Bugbee	-	Absent
Anderson, J.	-	Aye	Burkhardt	-	Nay
Anderson, O.	-	Nay	Cain	-	Nay
Arbanas	-	Nay	Campbell	-	Nay
Arness	-	Excused	Cate	-	Nay
Aronow	-	Absent	Champoux	-	Nay
Artz	-	Nay	Choate	-	Nay
Ask	-	Nay	Conover	-	Nay
Babcock	-	Absent	Cross	-	Nay
Barnard	-	Absent	Dahood	-	Absent
Bates	-	Aye	Davis	-	Nay
Belcher	-	Absent	Delaney	-	Nay
Berg	-	Nay	Driscoll	-	Nay
Berthelson	-	Nay	Drum	-	Nay
Blaylock	-	Nay	Eck	-	Nay
Blend	-	Nay	Erdmann	-	Nay
Bowman	-	Nay	Eskildsen	-	Absent
Brazier	-	Aye	Etchart	-	Nay
Brown	-	Nay	Felt	-	Absent

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1	Foster	-	Nay	McCarvel	-	Nay
2	Furlong	-	Absent	McDonough	-	Nay
3	Garlington	-	Nay	McKeon	-	Nay
4	Gysler	-	Nay	McNeil	-	Nay
5	Habedank	-	Nay	Melvin	-	Nay
6	Hanson, R. S.	-	Nay	Monroe	-	Nay
7	Hanson, R.	-	Nay	Murray	-	Absent
8	Harbaugh	-	Nay	Noble	-	Nay
9	Harlow	-	Nay	Nutting	-	Nay
10	Harper	-	Nay	Payne	-	Excused
11	Harrington	-	Nay	Pemberton	-	Nay
12	Heliker	-	Nay	Rebal	-	Nay
13	Holland	-	Excused	Reichert	-	Nay
14	Jacobsen	-	Nay	Robinson	-	Nay
15	James	-	Nay	Roeder	-	Nay
16	Johnson	-	Nay	Rollins	-	Nay
17	Joyce	-	Nay	Romney	-	Nay
18	Kamhoot	-	Aye	Rygg	-	Nay
19	Kelleher	-	Nay	Scanlin	-	Nay
20	Leuthold	-	Nay	Schiltz	-	Nay
21	Loendorf	-	Nay	Siderius	-	Nay
22	Lorello	-	Nay	Simon	-	Nay
23	Mahoney	-	Aye	Skari	-	Aye
24	Mansfield	-	Aye	Sparks	-	Nay
25	Martin	-	Nay	Speer	-	Nay

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Studer	-	Nay	Wagner	-	Nay
Sullivan	-	Nay	Ward	-	Nay
Swanberg	-	Nay	Warden	-	Nay
Toole	-	Nay	Wilson	-	Nay
Van Buskirk	-	Nay	Woodmansey	-	Nay
Vermillion	-	Nay	Mr. Chairman	-	Nay

CLERK HANSON: Mr. Chairman, eight Delegates voting Aye, seventy-nine voting No.

CHAIRMAN GRAYBILL: Seventy-nine Delegates voting No and only eight voting Aye, the amendment fails. We are back on section six as proposed by the committee, by the majority report, on page twelve.

Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, I rise in support of the majority proposal. It seems to me that we are missing the issue here and I'm amazed that we are talking about how much money should be appropriated in the future for driver's education, how much money should be appropriated for highway construction, how much money we should appropriate for the other functions the highway department is expected to accomplish. It seems to me the real issue is how far we should deviate from a basic principle of government. Now, when we reestablished the executive, the judicial and the legislative branches of government previously here, I assumed that along with that we established that these various branches should con-

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continue to operate as a check on eachother, and it seems to me the sole issue here on whether we adopt the majority proposal or go back to the present Constitution is whether we the people, through our legislature, should periodically check and determine if state monies are being spent in a manner consistent with our best interests. I don't think anyone doubts the benefits derived from roads or the need for them and I believe future legislatures, the people who are in these future legislatures, will be able to judge these benefits and determine these needs as well as we can now. I really feel that if we are going to appropriate money here for highways we have to say we can better judge this now, the amount of monies that will be needed for road building purposes in, say, 1984, and if we feel that way, it seems to me then we should go all the way. We should appropriate the money needed for law enforcement, the money needed for education, and the money needed for all of our other needs. This is a determination that we'll have to make now for a long period in the future. Do we appropriate monies by a constitution? I think not and I support the majority. I want my legislature to take a look at all appropriations in the future and determine if the money is being well spent, and I have confidence that they'll continue to appropriate to the highway department all the monies that are needed for roads.

CHAIRMAN GRAYBILL: Now, Mr. Barnard and Mr. Wilson,

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you have both indicated you wanted to amend section six and I waiting for one of you to rise.

Mr. Wilson.

DELEGATE WILSON: Mr. President, I don't know where -- there's a new amendment placed on our desks. I don't know where it came from. It looks pretty good to me. Are we going to discuss it? Do you have a copy of it?

CHAIRMAN GRAYBILL: I have a copy of it. I wrote it and Mr. Toole put it out and we can talk about it later but I think we ought to decide on section six first. I don't think that Mr. Toole wants to move it yet, and neither do I yet.

DELEGATE WILSON: Well, Mr. President, then I remove -- renew my motion to strike the last sentence in section six of the majority report.

CHAIRMAN GRAYBILL: Very well, Mr. Wilson makes a motion to strike the last sentence and, Mr. Barnard, I think this is essentially the same thing that you were proposing so I take it that takes care of your proposal, and the effect of this is to remove the language which the subcommittee, or the committee put into section six, calling for a three-fifths vote of the members of the legislative assembly. So, the motion now is to delete lines thirteen through sixteen, that is, the sentence on lines thirteen through sixteen on page twelve. It has the effect of deleting the legislative three-fifths check on the highway earmarking paragraph. Is there discussion?

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Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, I won't make a long speech in response to this as I covered it before, but obviously if you do this, you cut the heart out of the whole thing because that's the sentence which returns the control of this vast sum of money to the people, and I would strenuously resist any attempt to eliminate from the committee report the element of legislative control.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I rise to resist the proposed deletion. One of the things in campaigning that I said was, if there was some way to make the highway department responsive to the people without taking away the earmarking of the funds to a certain extent, this is what I wanted to do. And, for this reason, I support the majority position on this because I feel that it answers the problem that I had with the earmarking of the funds to the highway department. I feel in this way the highway department will get all of the money as long as they are responsive and as long as they are doing a good job, and so I support the majority proposal.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, I'd like to say that I'm one of the Delegates that comes from the sagebrush country down there and we have great concern for secondary roads, feeder roads, farm-to-market roads, and county roads--that sort of

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thing, and I'd like to direct a question to Mr. Drum if I might.

CHAIRMAN GRAYBILL: Mr. who?

DELEGATE CHOATE: Mr. Drum.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE CHOATE: Dave, do you envision in this report that there will be any change in the position of the highway department as to use of funds for secondary or something other than perhaps primary and interstate roads? In part of our district, over in Carter county, they're the only county in the United States that does not have a paved road going through their county. There is a road that is paved from Baker down to Ekalaka and that ends there. Now, these people have a real concern. They have been trying for twenty years to get in paved on down to Alzeda. Do you think that any help in this area can be from the wording in your proposition?

DELEGATE DRUM: Yes.

DELEGATE CHOATE: Thank you. Another question, please. How do you propose that this might be accomplished?

DELEGATE DRUM: Mr. Chairman, Mr. Choate, this is one of the considerations that the committee had, is that the highway department would be more responsive to the needs of county and city roads for maintenance and perhaps for construction, for resurfacing. As the people's representatives come over here every two years, if they are looking at a bad road

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situation and they hear a lot about it from the voters, they are going to reflect that attitude to the highway department and now we have made it constitutional for them to channel more money back in that direction and this is one of the reasons that we feel very confident that not only is this a good compromise of all parties, it's going to result in a lot better roads in counties and cities in Montana.

CHAIRMAN GRAYBILL: Mr. Harper, before you speak the Chair would like to announce that, after consultation with the committee chairman, we are going to attempt to finish section six right now and then we don't intend to work tonight because we think if we can finish section six we will be all right tomorrow. That just gives all of you an idea what we are going to be doing in the next hour.

Mr. Harper.

DELEGATE HARPER: Very good. I'd like to press on then. Who did you say put this unsigned section six on our desks?

(Laughter)

CHAIRMAN GRAYBILL: I said that Mr. Toole, I believe, had it put out and I wrote it and we have an idea to use it but not yet. Is that right, Mr. Toole?

DELEGATE TOOLE: That is correct.

DELEGATE HARPER: Am I talking about -- you put on the desks the thing you just talked against, is that right?

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CHAIRMAN GRAYBILL: Well, I may -- maybe there's too many things put on the desks that I don't have copies of.

Mr. Toole.

DELEGATE TOOLE: Yes. It was my intention and I still don't know what -- how to go about it to make it available to the people of this state to have an alternative on the ballot. This is one of the alternatives that we have discussed. I thought that it should be distributed so that you could be studying it because it may be that at the conclusion of the debate, after we have heard enough debate, that I will make a proposal that this wording be placed on the ballot as an alternative. Now, the word, section six, may confuse you there but that's just the way it happened to be written up.

CHAIRMAN GRAYBILL: Mr. Harper, it's the one with the Roman numeral section six.

DELEGATE TOOLE: Yes, the Roman numeral section six. Just ignore that. Just think of the -- just ignore the Roman numeral section six.

DELEGATE HARPER: Well, what I was going to get at -- I just want to be talking against the thing that I think I'm talking against, that's all. It seems to me that this is a rewriting of section one (b) of the present article.

CHAIRMAN GRAYBILL: Well, Mr. Harper, let's stay on the subject and the subject is Mr. Wilson's motion to strike the last section of section six as it appears on page twelve.

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Now, if you'll stick with that and not worry about the things that are just put on your desk to read in your spare time.

DELEGATE HARPER: I'm sorry. That's what I was asking, if this was what's before us, so the answer is no, is it not?

CHAIRMAN GRAYBILL: The answer is no.

DELEGATE HARPER: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, I rise in support of Mr. Wilson's motion and in opposition to the majority report. I would just like to point out that several people from the following associations have met and if the majority proposal goes in the way it is, they have all -- they have no alternative but to work against the Constitution: The Wood Products Association; the Montana Motor Transport Association, which has four hundred members; the Montana Automobile Dealers, which has twenty-five thousand members; Montana Auto Dealers, four hundred; Montana Highway Users Federation; AFL-CIO; the Montana Farmers Union; the Montana Taxpayers Association; the Montana Hardware and Implement Dealers, four hundred people; and the Montana Petroleum Association. I would like to just urge you to keep that in mind when you pass this.

CHAIRMAN GRAYBILL: Mr. Roeder.

DELEGATE ROEDER: I wasn't going to say anything, but when Mrs. Babcock and Mr. Wilson gang up, I feel that now I'd better, since they've stomped on me in this Convention. I

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don't -- I can't add anything to what Mr. Drum and Mr. Toole and others, and Mr. Loendorf have said very well on this thing. I would like to add this proposition. I think something like this would be very popular. I'm one of the idealists, like Mrs. Bowman, who opposes earmarking on principle. I've said things against earmarking and written things against earmarking for many years. I'm willing to go with the majority proposal, however, and I'd like to add this. I think doing what we're doing here would be very popular because one of the most open issues in District Eleven was the question of earmarking revenue, particularly section one (b), and most of us -- I can't speak for Fred and Mason and everybody, but I know in my own case, I was completely open. I was opposed to earmarking revenue and I was elected -- a Democrat in a Republican community, a college professor in a community where there's a serious town down problem, and I was completely open and I just wonder if we really need an alternative, John.

CHAIRMAN GRAYBILL: All right, the issue is Mr. Wilson's motion to strike the last sentence from section six as it appears on page twelve, striking out the three-fifths vote of the legislative assembly.

Mr. Barnard.

DELEGATE BARNARD: Mr. President, I would like to withdraw my proposed amendment and speak in favor of Delegate Wilson's proposal as they are almost -- I think they are iden-

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tical. I just want to say, if you want to cut the highway program in half in the next four years, why, just leave this section in.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Thank you, Mr. President. I've been sitting back here waiting for some of these more loquacious people to say what I was going to say, but -- and they have said most of it. However, I'm rising in support of Mr. Wilson's motion. I believe that we have such a vast amount of highway system yet to build and improve in Montana, well, it's unbelievable how long it's going to take, how many years before we will have it completed, until we have safe roads like Mr. Furlong was talking about or Mr. Aasheim, excuse me. I'm sorry. And, I believe that therein lies our largest safety, these dual highways. There's no question in my mind they save an awful lot of lives, and we're a long ways from it and if we remove, or get control of these funds so we can divert them into something else -- there's a choice apple over there once in a while -- we're a little low on funds in the legislature. I'm afraid they'll reach over there quite easily and reduce the highway funds. Now, if they do this it might get to be a habit and it will be crippling and therefore we'll have a lot of equipment lying idle perhaps and people out of work that were expecting to work. I'm very much in favor of Mr. Wilson's motion.

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CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, could I ask Mr. Furlong a question?

CHAIRMAN GRAYBILL: Mr. Furlong?

DELEGATE FURLONG: You can ask it, yes.

DELEGATE MAHONEY: Mr. Furlong, could you give me the net loss in revenue that this will take out of the present program -- not anything about costs or anything, but the net loss that you're taking out. I understand that you're taking out the use -- the new car thing. Is that coming right -- is that right, that's coming out?

DELEGATE FURLONG: That's right.

DELEGATE MAHONEY: Would you have any idea how much that is?

DELEGATE FURLONG: Yes. For last year, one million one hundred ninety-two thousand forty-three dollars.

DELEGATE MAHONEY: O.K., thank you. Mr. President, might I speak now?

Mr. President.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: One million, a hundred and ninety-two thousand dollars. That's approximately ten million -- it's very close to eleven million that's going out for interstate system at one to ten. This is one to ten. This is what you're taking out in interstate system. Now, how much is -- I don't

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know how much maintenance is. You're already diverting. This body right now is starting in to take away from the highway funds of the state of Montana from the highway department. This you're doing right now and I hope that you all realize what you're doing because this is the start of taking away highway funds out of the highway department. It's right in this particular start of the amendment. Now, I hear this highway department being criticized and nobody ever criticized them worse than I did. Now, I'm going to get it straight on this floor, I voted for one of the few in the senate when this highway diversion amendment was placed before the voters. I voted No, but I'm coming to the point that I'm starting to wonder what will happen if we don't tie gasoline and some of this other stuff down. I have watched from no cigarette tax at all, when I first came to the legislature, finally it was two cents and look at it now. We're financing buildings, we're financing everything that we have got -- what?--soldiers' bonus and that. We're using all this. Now, are we going to do this with gasoline. Are we now going to find this one easy thing sitting out here that people have to have and say we will now take so much to the general fund, so much for schools, so much for welfare. This becomes the problem that's facing me in this issue. As late as a week before the general election, I was in the highway department and I flatfootedly at that time came out and said I'm opposed -- I'm for leaving it the way -- not the way

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it is, but the old way. I have no change and I have watched the defeat of the sales tax. Here, now, is a new tax we can grab and take on motor fuel. This is why that I watch, right here in this own body we are now taking away over a million dollars. It's coming out of that fund because it's going to be lost that we have in there if this passes. And, I hope that this Convention will realize that the pressure that will be on the legislature. Now, in answer over here -- and I got a bang out of Mr. Drum's statement to the distinguished gentleman, the senator from Custer county. If they're all going to do what you wanted down there, we will have nothing in the state. The interstate system will stop dead. If we're going to build that road, and I'm for it, I know the one you're talking about from Carter county over there, down south to get you the below. You have the -- I'm going to say this, that the highway department can be controlled by the legislature the first day the legislature decides to do it. There's nothing that says in here -- they're now under a line appropriation. They have put them under, and I fought for years and couldn't get it but they now have got it. Secondly, I think that with the governor, maybe with the highway in there, we could do a lot of things. They're not the big things. This is being done by the permission of the legislature just because they got the funds they're being appropriated. I'll regard, I imagine, that Mr. Chittim did say that you couldn't take out. I still thinx

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you can. I think the legislature made a very wise move when they did take out and says the highway patrol is part of the highway system and policing it is a necessary job. I see nothing wrong with that. Now, I think that -- I question, if we can't pass the Wilson amendment, how would you suggest to go to three-fourths of the senate, or three-fourths of the body, or two thirds? You have dropped this down to this unicameral legislature it will take sixty. If it's bicameral at the hundred and fifty, it will take considerably more. But, the present time, a two-thirds vote. You come down to three-fifths. You're making it that much easier. I hope that this body already today we're starting to divert funds away from highways going into someplace else and I'm sure that every one of you sitting in here wants roads for your county or your city. Not a one of you wants it, and if you think you can come into the legislature and get it easier that way than you can now when we've got it tied down, watch out, because you're going to be facing, as Mr. Toole says, mass transit. We're going to find a number of other things that we're going to be done and the highways are going to suffer. I just want the public to know it.

CHAIRMAN GRAYBILL: Mrs. Blend.

DELEGATE BLEND: Mr. Chairman, would Mrs. Babcock yield to a question, please?

CHAIRMAN GRAYBILL: Mrs. Babcock?

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DELEGATE BABCOCK: I quake in my shoes. Just remember, I'm just an old housewife.

DELEGATE BLEND: Well, woman to woman, Betty --

(Laughter)

DELEGATE BLEND: Betty, the organizations you mentioned as being opposed, are they specifically in opposition to the three-fifths amendment?

DELEGATE BABCOCK: They would prefer to have the legislation remain the way it is in the present Constitution.

DELEGATE BLEND: Thank you.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Blend.

DELEGATE BLEND: I, too, have recently received letters from the organizations which Mrs. Babcock has mentioned. The content of that letter revealed to me, or those letters, revealed to me that they were in opposition to having the anti-diversionary clause removed in its entirety. I feel rather sure that if they knew the content of this that they would not be so one hundred percent in opposition. Thank you.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. President, would Mr. Drum yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Drum?

DELEGATE DRUM: Mr. Johnson.

DELEGATE JOHNSON: Dave, have you folks considered

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in your deliberations that with the legislature being able to reach over in the highway department with some control and perhaps divert some of these funds that if there weren't enough there to maybe carry on what the highway department was doing at the moment they might raise the tax on gasoline?

DELEGATE DRUM: Torrey, I -- Mr. Chairman, Mr. Johnson, the problems which may arise as a result of the circumstances you describe may be the will of the people. It certainly would be the will of the legislature if they wanted to react in that way. I couldn't say it would not happen but as a committee we were confident that the highway department would be responsive to the legislature and the legislature was going to be responsive to the people in building as many good roads and highways as we can, and we didn't feel it was a threat at all that the roads were going to diminish in any way. We thought we were improving the chance of having better roads and highways in the state of Montana, and we are not legislating the money out of the highway department. We feel that is up to the legislature to take that action at the appropriate time if ever it is needed.

DELEGATE JOHNSON: Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: I'd just like to point out to the people here -- won't it be a dandy merry-go-round? The legislature needs some money, just raise the sales tax on gasoline,

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divert it into the highway fund, reach in there and pick it out. Gee, a dandy way to raise taxes.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, it is very evident to everybody that all these funds come from the uses of roads and highways, and I have a little more confidence in the committee than I do the next session of the legislature in the belief that they might divert it out to some other source, but the committee did broaden, according to Mr. Drum, the ability of the funds to be used for secondary roads and that sort of thing--some of the needs I see more in eastern Montana--so therefore, I sure rise in support of Mr. Wilson's motion to remove that clause that permits the legislature to make any further diversion. I don't think it needs to be diverted any further than for use on roads and streets, that sort of thing.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Thank you, Mr. Chairman. I think one of the issues here is not whether the legislature -- how they are going to appropriate this money, but what kind of an organization do we have in the highway department and exactly how insensitive are they to the needs of the people. After all this is not their money, it is our money--both the federal part of it and the state part of it. It is our money, and people don't seem to look at it that way. I'd like to cite one instance I've followed for a number of years. Now, I'm going to

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talk about Missoula because I come there. I assure you that I think this is wrong in principle. It isn't because it's my town, but I do know about it because I've followed it and worried over it for a long time. Yesterday, I found out from Mr. Simpkin of the budget analysis from the highway department and I quote: Each fiscal year highway divisions submit budgets. The board allocates funds on its subjective judgment as to need and cost effectiveness. Now, I submit that subjective judgment for the use of the people's money is a political dingbat; that is, it is not responsible or responsive to the governance of our money, both state and federal. The legislature must be able, I feel, to insist on efficiency and to protect the people's interests with fairness and responsiveness to their needs. Now, about this situation. We have in Missoula -- the freeway goes through, but on the north-south route, which is the Mexican-Alaskan highway -- of this, I am fairly sure, when it is finished. There is an interchange to connect up. We now have people living on the south side. They can't get to work on the north side over the river because there aren't enough bridges. This would alleviate this condition considerably. We have people tied up in traffic every morning and every evening for one-half hour. This has been going on for years. Also, all the traffic that comes in from, say, Spokane or Helena, Billings, Butte, has to go right through the town. There is no way to circle this traffic around. And, also, I might add that we are

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the fastest -- Missoula is the fastest growing community in the state. Now, I have gone to meetings after meetings. The highway department has these meetings. They have to do it by federal mandate. People stand up and are desperate about trying to finish this road because of our situation and all that happens, they listen nicely and then they send you back a very expensive booklet about what you've said and what everybody else has said, and absolutely nothing is done. I might add I've gone and talked to Mr. Chittim and it didn't get anywhere. I talked to Mr. Olson. It was eleven o'clock at night and all he kept saying was, well, I'm interested in rural roads and I said, but I'm talking about a problem that is here in western Montana. This is your area, and he kept saying over and over again, well, I'm just interested in rural roads, and I said, well, I'm interested in rural roads, too, but here you are-- you've got a problem. No answer. I have also talked to the people in Mansfield's office to such an extent that the other day, Peggy Dimichele even sent me a whole -- an article about how things are coming on with the highway trust fund. I've talked to Teddy Kennedy when he came to Missoula and said, what are we going to do about the federal highway trust fund. It's just great to have this money but I happen to live in a town where absolutely nothing has been done, and we can't do anything. We go to everybody. We get no answer whatsoever. And, then, I'd like to finish up with this. Our delegation came to

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the legislature last time and this is really the point of what I'm trying to say. They found out -- it had just come out what is called the federal highway users tax. Ninety percent of the construction cost of any highway would have been covered under these three conditions, all of which Missoula met, by the way: a community under fifty thousand where economic development was needed and it had to be tied into recreational development, and we had that in Snow Bowl and we have it in the California and Texas traffic up to Glacier National Park. Our delegation went to the highway department at least four times to try and talk about this. Now, this is the kind of thing I don't like as a citizen is that our delegation could not get any responsiveness out of the highway department. Mr. Chittim agreed that Missoula would meet these federal standards. Now, this was a new federal bill, but there had been a prior agreement with the Big Sky country -- with the Big Sky development. Now, this was a road that was due to be built going where no people were yet. We have been sitting on this problem for about ten years now, asking and asking and asking for some help. I might also say that one of the things I think is a real problem, and you will all laugh but I think this is true -- excuse me, Betty -- but Missoula, for the past thirty years has never voted for a governor. Some people think they're stupid; some people think they're smart, but they haven't -- consequently, they have never had a highway commissioner. So, we're stuck. I don't

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1 think it's right for the fastest growing community to have this
2 kind of problems when we're building roads going off nowhere.
3 There is no way for us to get any action whatsoever out of the
4 highway department. We're stuck. I don't like to be stuck and
5 I wouldn't like it if I lived in Ekalaka or Glendive or any-
6 where. I think it's just unfair. And, then, when they went
7 to Mr. Chittim, when the legislators went to Mr. Chittim, and
8 I quote from one of our legislators, we got the impression that
9 Chittim's hands were tied. By whom, we didn't know, and I
10 don't think that's democratic, I don't think that's fair, and
11 I submit it is our money and I think there's something wrong
12 with the whole system. Thank you.
13 CHAIRMAN GRAYBILL: Mr. Romney.
14 DELEGATE ROMNEY: Mr. Chairman. Everyone knows that
15 the gas tax raises the money, that it's the cow that gives the
16 milk. We all know that over the years we have had to go to the
17 people to get this gas tax enacted. Some years ago, the people
18 became incensed because the bureaucracy without ears could not
19 hear their pleadings, so they thought, well, we'll take care
20 of this by not permitting the use of this gas tax money except-
21 ing roads, and that was father to the anti-diversionary amend-
22 ment, and the people voted that. I rarely feel like going
23 against the mandate of the people when they express themselves
24 in a vote in a referendum and do it emphatically. I hesitate
25 to go against their will and I feel that way about this matter.

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But, we are really diverting when we use gas tax money for driver's education, and I think that's good. We're diverting when we use the money for tourist promotion, and I think that's good. We're diverting when we use it to pay the salaries of the highway patrol, and I think that's good. I was loathe to vote for this section six because of the final paragraph, which is the subject of the amendment which we are now discussing, but like Mrs. Bugbee, if we're going to be legislating in the Constitution as we are, I have a little Orphan Annie over in western Montana--the Skalkaho road. It was built in 1923 and '24. It's the only primary highway in Montana that has no -- is not given any consideration whatsoever by the highway department. Legislators from Bitterroot, Missoula, Granite county, Silver Bow and Deer Lodge county have gone to -- come over here to Helena to meet with the highway department. They are going to meet with them again on the seventh of this month. We get nowhere. The bureaucracy has no ears. The people plead and they get no hearing. So, in spite of my feeling that the people of the state voted this anti-diversionary amendment, in spite of the fact that I don't like this final sentence which is under discussion at this time, I think that for once, Romney must be practical and I think that I will vote for the possibility of getting the three-fifths into action in the next legislature.

CHAIRMAN GRAYBILL: Mr. Davis.

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DELEGATE DAVIS: I certainly appreciate all the Delegates' comments today because I was completely at a loss on this and I'm afraid I would have made a grievous error and would have pushed the button right along with the rest of them. But, it seems to me that Mrs. Bugbee and others have really helped me decide how to vote because it looks like it has been very clearly stated that we are going to punish the people for not building the roads the way we want them built, so we're going to take the money away from them and we haven't got our road yet from Dillon to Helena and all the way through Beaverhead county, and it's quite obvious now that if they don't take the road that you want built that's got the biggest number of votes, we'll vote them out. So, it looks like the only way we'll get our road is to take the three-fifths out. That's the psychology and that's the good system of good constitutional government that you people have been studying. It really amazes me that we are now going to tell the legislature, if I don't get my road across the way in Missoula, we're going to vote out all the money and we're going to put it in education or welfare. I'm going to support the amendment to take out the two-fifths and if it comes up again, I'll put back in the original one.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: There is only one -- there is only room for one government in Montana.

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CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President, like many others here in this body, I've listened with considerable interest in this debate, and I must confess I started out by being in favor of section six. I have now changed my mind in line with what I have heard here. I would like to point out that section one (b) in the Constitution and section six, as proposed, are different. They are different in that section six, as proposed, expands the uses to which this money can be spent and they include town, city and county obligations on streets, roads and bridges. Now, here is a vast area for improvement. Not too many years ago, the cities were very hard pressed for funds to finance the maintenance and repair their city streets and the state legislature, recognizing that need, passed a tax, I believe it was, on liquor. Some of you may know about that. I think that's what it was for. Now, I submit that if these funds can now come from the highway fund, here is a large sum of money now coming from the liquor tax which can be used for these other purposes which the legislature might want to use. Secondly, the fact that they have expanded the uses for which this fund can be used, which seems to me will be a long, long time before this fund would ever reach the point where there would be a surplus. There's the city streets of Shelby, perhaps, that Mr. Aronow spoke about. They could be paved from the highway fund -- probably not get a very high priority, ad-

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mittedly. The county roads would come first, but it seems to me we are looking so far into the future where there might be a surplus here as to make the thing unrealistic, especially in view of the fact that by putting in this two-fifths vote that the fund could be tapped makes it a very real possibility that the fund would be diverted long before this surplus ever arose. And, finally, I'd like to call to the attention of the body to the fact that the expansion that has already been made by the proponents of this measure have reduced the amount coming into the fund by, I believe, seven million dollars. So, this, again, postpones further the possibility of there ever being a surplus in this fund. Now, as I understand the purpose of this three-fifths vote, it was just for that purpose and that purpose alone. It was to look forward to the day when there might be a surplus in the highway fund and then at that time it could be used for other purposes, and I submit for your consideration that this is a long, long time in the future if they are going to start using it for city streets, if they are going to start using it for all the small roads in the state that have not yet been serviced.

CHAIRMAN GRAYBILL: Now, ladies and gentlemen, the issue is on Mr. Wilson's motion to strike the last sentence out of subsection -- out of section six, and we've had a lot of debate and you certainly may continue to talk about it, but the Chair will expect you increasingly to stay on the subject of

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whether or not to delete the last sentence, because I think we've had lots of discussion and we'll still have time to discuss the section again one way or the other, but let's try to decide that issue. Is there further discussion on that issue?

Mr. Simon.

DELEGATE SIMON: Mr. Chairman, I have been seated here in a very comfortable chair and I envy all of you, but I am going to rise out of that chair and support the deletion and support Mr. Wilson on the deletion. We have been sixteen years with this enactment of the law and I see that your Helena streets are in fine condition, but we would not like to have you divert much of this money before we get some in Billings, the largest city in the state of Montana. I went down your street the other day -- right down this -- right down this street down here on your four lane highway and I thought I was back in Billings. There was water running over the road about six or eight inches deep and they had a sign on the road, water. It was a lake. I always enjoy going down to Betty Babcock's place. We have worse streets in Billings but I don't know where, so I would like to support this motion because I don't think we're in any position at this time, under any circumstances, after sixteen years to talk about diverting funds. I think twenty-five years from now we can talk about it and the people will tell us when they want it done. To divert funds from this for any reason today of any kind seems to me that we

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are doing the thing the people wanted us -- didn't -- won't want us to do because what they enacted by referendum sixteen years ago in 1956. I guess that's how long ago it is. It seems to me that when you take the attitude that you can divert funds before you have them by a three-fifths majority, and anything I don't like on the highway is fifths -- that's for sure. I'd rather make it a full quart because fifths on the highway do not belong in any constitution. I would heartily support the deletion of the last paragraph.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I'm sure that every one in this group can think of a road or a city street that needs improvement, but I'm just wondering, and I would like to ask Mr. Drum to yield to a question, Mr. President.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mrs. Bates.

DELEGATE BATES: Mr. Drum, what is being done in this article for other earmarked funds and will they be used to the intent and purpose they were intended?

DELEGATE DRUM: The only other semblance of an earmark would be in the agricultural which was section fifteen which has been -- was duplicated exactly in the article we passed yesterday and so, as I understand it, it will not be in the finance article, but that's an earmarking of those who have cattle or wheat and who levy a tax upon themselves for the ser-

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vice to their own industry.

DELEGATE BATES: O.K. Thank you.

DELEGATE DRUM: Did I answer your question, Mrs. Bates?

DELEGATE BATES: Yes, thank you. I -- Mr. President, I would also like to ask Mr. Mahoney to yield to a question.

CHAIRMAN GRAYBILL: Mr. Mahoney?

DELEGATE MAHONEY: I'll try.

DELEGATE BATES: Mr. Mahoney, you mentioned that the legislature can now control the highway fund and if this is so, then why is there any need for section six in this article?

DELEGATE MAHONEY: The legislature can control the fund. They have it and they're appropriating. They have a line appropriation being made to this department over there now. They can control it. Now, as highway six, it would be awful if you didn't have one (b) or something. Now, this is it, but there's plenty of ample protection. The highway is appropriating these funds. No question about it.

DELEGATE BATES: O.K., thank you.

Mr. President.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: I would like to have a substitute motion that we delete this entire section. I don't really see the need for it. Thank you.

CHAIRMAN GRAYBILL: We voted on that once, Mrs.

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Bates. No, I guess we didn't. We voted on deleting it and putting in one (b). You are going to make a substitute motion to delete section six in its entirety?

DELEGATE BATES: Yes.

CHAIRMAN GRAYBILL: Mrs. Bates has made a motion to delete section six in its entirety. Is there further discussion? Will those in the back who are not members of the delegation sit down or do something so I can tell who is standing up back there? Please sit down if you are not a Delegate.

Mr. Foster.

DELEGATE FOSTER: Mr. President, fellow Delegates, I realize the hour is getting late and we're all getting tired but there are a few points that I would like to get cleared up. Would Chairman Delegate Rygg answer two questions?

CHAIRMAN GRAYBILL: Mr. Rygg?

DELEGATE RYGG: All right.

DELEGATE FOSTER: Chairman Rygg, in your opening remarks concerning the need for this section, you indicated that you felt that it was a compromise and could you amplify a little bit as to why you felt there was a need for this compromise in view of the fact that really, I think, in this debate here that has gone on a long period of time, at least to my satisfaction, no one has said or substantiated, really, the need for the anti-diversion amendment. Could you amplify on that a little bit?

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DELEGATE RYGG: I think I said I thought there were three factions -- one who did not want it at all; one who wanted to retain one (b) as it was; and the third group, which I considered the committee's feeling was more or less a compromise, yes, and by the compromise I am meaning that we had taken some of the revenue from it and we have added some of the expenses to it and we had also put in a three-fifths hammer over the head of the highway department, if you want to call it that. That is why I thought it was a compromise.

DELEGATE FOSTER: Do you still feel that after the debate today that there is as much need for having this compromise, as you felt before the debate?

DELEGATE RYGG: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Yes, I think so. I think I feel about the same.

DELEGATE FOSTER: Thank you. Mr. President, fellow Delegates, I would like to answer just a few questions that have been raised in the course of the debate. I happen to be one of those quote, unquote idealists and I personally have not been completely convinced that there is any need for the anti-diversion amendment. I realize the importance of the legislature handling tax money and revenue monies and I also realize that the legislature has a great deal of power in handling these monies. I think you will all recall that with a simple

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1 majority vote of the legislature that they, in fact, can remove
2 the tax exempt status of education property and religious prop-
3 erty and et cetera. So, I personally don't see that we need
4 to give special consideration to the highway department. I
5 think that they are very well taken care of in the statutes.
6 In fact, I think that's where this whole problem should be put.
7 I'll quote from the statutes, of which there are approximately
8 thirty pages, which cover this type of funding; 84-1840 says:
9 All taxes, interest and penalities collected under this act
10 shall be turned over promptly to the state treasurer and the
11 state treasurer shall place the same in the earmarked revenue
12 fund to the credit of the state highway department. So, I
13 think Mr. Mahoney's point of the money being immediately divert-
14 ed are a little bit ill-founded. It is presently earmarked
15 and would remain so if we removed this section from the Con-
16 stitution and in fact what would happen then would be instead
17 of having to have a sixty percent vote, as the present section
18 in the majority report requires, it would simply be a fifty
19 percent vote, the same as all other forms of taxation. I won't
20 belabor the point to any great extent but I will call your at-
21 tention to a few of the supporters of the anti-diversion amend-
22 ment and a few things that they have said. I have here a letter
23 from the Montana Highway Users Federation, and at the very bot-
24 tom, it says: Let's oppose giving any future legislature an
25 opportunity to divert these funds. I submit that we should not

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be tying up the legislature unduly and I think, in fact, to delete this whole section would be the logical approach to that. I also quote from a statement by Del Siewert, who was speaking in support of the anti-diversion amendment, and he states: The Constitutional Convention must look at the financing of state government from the practical aspects -- excuse me -- Earmarking is a horrible theory but a very practical method of financing. Our position supports the retention of the anti-diversion amendment; Del Siewert, executive secretary, Montana Chamber of Commerce, in the Montana Motorist magazine. I submit that this concept, if it is such a horrible thing, that maybe we ought to at least take a vote on it in this Convention and, in so stating, I support the position of Delegate Bates. I don't want to give anyone the idea that the committee proposal is in any way unsatisfactory to me because I think they have done an outstanding job, and I could, in fact, be very happy to live with their proposal if, in fact, the present motion does not succeed, but I do think that it is important that we have a vote on this and that we, in fact, have an opportunity to express whether we want to retain anything at all in the Constitution in special interest to the highway department. Thank you very much for your time.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: I resist the motion to delete. I think the section is a good section in the Constitution and

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especially as it is now written in section six. Now, section six is quite logical. What we've taken out of section six, basically, as to money that is no longer earmarked but the legislature can divert it to the highway if they want to, is the new car sales tax and the new car sales tax is actually a replacement of the property tax on a new car for the first year. That's what we've taken out. Now, that's logical as to whether or not that should be used for highway purposes. Secondly, what we've added to the section is those things that we do feel are related to the proper expenditure of gasoline taxes for highway purposes. We've just enlarged what we've spent. We haven't went and took another type of an expenditure which would divert it entirely from something different associated with highways, and that was our logic in these two changes to make it more equitable, and I and the committee feel that an anti-diversion amendment is needed in the Constitution with the last sentence on it. Thank you.

CHAIRMAN GRAYBILL: Mr. Artz, you were up next.

DELEGATE ARTZ: Mr. Chairman, I just want to reiterate the facts what Delegate Mahoney said. On November 6, 1956, the anti-diversion amendment was passed one hundred sixty thousand, five hundred and thirty-three to forty-seven thousand six hundred and fifteen votes, and I think it would be very unwise to antagonize a hundred and sixty thousand people. Thank you.

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DELEGATE TOOLE: Mr. Chairman, I might start out by saying -- replying to Delegate Artz -- 1956 was quite some time ago now. Attitudes have changed and are changing rapidly and I'm not as frightened by those statistics as many people are. In reply to Mr. Foster and Mrs. Bates, I would say that I, too, came here as an idealist and philosophically I support your proposal to delete section six, but as a practical matter it just can't be done. This matter must be compromised. I'm surprised that Mrs. Babcock didn't name all of the pressure groups that are involved in this because I have a much longer list than she does. This is probably the most powerful coalition of pressure groups ever gathered together in the state of Montana. I think we must compromise. I think the committee has compromised and before the end of the day, after this debate has reached some sort of conclusion, we may compromise further in the form of an alternative on the ballot, but compromise we must.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: I rise in opposition, too, to the Bates amendment and in favor of Delegate Wilson. I never thought the day would come when I would be a supporter of the highway department because I've had lots of troubles with them, too, but nevertheless what we are talking about here, this great need for earmarking, is just because of a human weakness. When you're just desperate for funds to balance a budget at any

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level of government, you're just going to have to dip into anything you want and the reason we have to earmark funds for the highway is simply to assure that matching funds will be available, and everybody in Montana brags about all the federal money we have pouring back here into the state. If you don't earmark these funds you're not going to have money coming back to the state. And, I think, also, we lose sight sometimes of the fact that people look very enviously at the federal -- at the highway department. It isn't because of the funds they raise locally; it's because of these vast millions of federal dollars and you are never going to let the legislature be in any position to manage or take care of that money, and I think sometimes we lose sight of that. Thank you, Mr. President.

CHAIRMAN GRAYBILL: All right, the issue arises on Mrs. Bates' motion to delete section six in its entirety.

(Delegate Foster requested a roll call vote)

CHAIRMAN GRAYBILL: You want a roll call vote? Very well, there's plenty of seconds. Mrs. Bates has made a motion that section six, as proposed by the Revenue and Finance Committee, be deleted in its entirety. So many as shall be in favor of her motion to delete vote Aye, and so many as shall be opposed, vote No. Have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

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(No response)

CHAIRMAN GRAYBILL: Please take the ballot.

Aasheim	-	Nay	Cate	-	Aye
Anderson, J.	-	Nay	Champoux	-	Nay
Anderson, O.	-	Absent	Choate	-	Nay
Arbanas	-	Absent	Conover	-	Nay
Arness	-	Excused	Cross	-	Nay
Aronow	-	Nay	Dahood	-	Absent
Artz	-	Nay	Davis	-	Nay
Ask	-	Nay	Delaney	-	Nay
Babcock	-	Nay	Driscoll	-	Nay
Barnard	-	Nay	Drum	-	Nay
Bates	-	Aye	Eck	-	Aye
Belcher	-	Absent	Erdmann	-	Nay
Berg	-	Nay	Eskildsen	-	Absent
Berthelson	-	Nay	Etchart	-	Nay
Blaylock	-	Nay	Felt	-	Absent
Blend	-	Nay	Foster	-	Aye
Bowman	-	Nay	Furlong	-	Nay
Brazier	-	Nay	Garlington	-	Nay
Brown	-	Nay	Gysler	-	Nay
Bugbee	-	Nay	Habedank	-	Absent
Burkhardt	-	Nay	Hanson, R. S.	-	Nay
Cain	-	Nay	Hanson, R.	-	Nay
Campbell	-	Aye	Harbaugh	-	Nay

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1	Harlow	-	Nay	Nutting	-	Nay
2	Harper	-	Nay	Payne	-	Excused
3	Harrington	-	Aye	Pemberton	-	Aye
4	Heliker	-	Nay	Rebal	-	Nay
5	Holland	-	Excused	Reichert	-	Aye
6	Jacobsen	-	Nay	Robinson	-	Aye
7	James	-	Nay	Roeder	-	Aye
8	Johnson	-	Absent	Rollins	-	Nay
9	Joyce	-	Nay	Romney	-	Nay
10	Kamhoot	-	Nay	Rygg	-	Nay
11	Kelleher	-	Aye	Scanlin	-	Absent
12	Leuthold	-	Nay	Schiltz	-	Nay
13	Loendorf	-	Aye	Siderius	-	Nay
14	Lorello	-	Nay	Simon	-	Nay
15	Mahoney	-	Nay	Skari	-	Nay
16	Mansfield	-	Nay	Sparks	-	Nay
17	Martin	-	Nay	Speer	-	Aye
18	McCarvel	-	Nay	Studer	-	Nay
19	McKeon	-	Aye	Sullivan	-	Nay
20	McDonough	-	Nay	Swanberg	-	Nay
21	McNeil	-	Aye	Toole	-	Nay
22	Melvin	-	Nay	Van Buskirk	-	Nay
23	Monroe	-	Aye	Vermillion	-	Aye
24	Murray	-	Aye	Wagner	-	Nay
25	Noble	-	Nay	Ward	-	Nay

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Warden - Nay Woodmansey - Nay
Wilson - Nay Mr. Chairman - Nay

CLERK SMITH: Mr. Chairman, eighteen voting Aye, seventy voting No.

CHAIRMAN GRAYBILL: Seventy having voted No and only eighteen having voted Aye, Mrs. Bates' substitute motion is defeated. We are back on Mr. Wilson's amendment to strike the last sentence of section six. Is there further discussion? Mrs. Bates, for what purpose do you arise?

DELEGATE BATES: I would like to say why I voted the way I did and why I asked to strike. I was hoping --

CHAIRMAN GRAYBILL: All right, you may explain your vote.

DELEGATE BATES: I was hoping that the other amendment then would come on the floor wherever it has come from.

CHAIRMAN GRAYBILL: Very well --

DELEGATE BATES: Because I like it.

CHAIRMAN GRAYBILL: Mr. Wilson, you may close.

DELEGATE WILSON: Thank you, Mr. President. I'll make my remarks very brief because we're getting tired sitting here. I'd like to call your attention that the last sentence previous to the one I wish to strike does say that collection costs as authorized by the legislative assembly. So, the legislative assembly will have some control over this highway body and this is the thing that I am very hopeful that they will

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exercise their option in and, as Mr. Mahoney has pointed out to you people, that the legislature, if they will exercise their prerogative, does and can have control of the highway department. Therefore, I ask your support for deletion of the last sentence and I ask for a roll call vote.

CHAIRMAN GRAYBILL: Very well, as many as shall be in favor of Mr. Wilson's motion to delete the last sentence of section six, being the three-fifths vote provision, indicate by voting Aye, and so many as shall be opposed, vote No. Have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the ballot.

Aasheim	-	Aye	Bates	-	Nay
Anderson, J.	-	Aye	Belcher	-	Absent
Anderson, O.	-	Absent	Berg	-	Nay
Arbanas	-	Absent	Berthelson	-	Nay
Arness	-	Excused	Blaylock	-	Nay
Aronow	-	Aye	Blend	-	Nay
Artz	-	Nay	Bowman	-	Nay
Ask	-	Nay	Brazier	-	Nay
Babcock	-	Aye	Brown	-	Nay
Barnard	-	Aye	Bugbee	-	Nay

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1	Burkhardt	-	Nay	Harbaugh	-	Nay
2	Cain	-	Nay	Harlow	-	Nay
3	Campbell	-	Nay	Harper	-	Nay
4	Cate	-	Nay	Harrington	-	Nay
5	Champoux	-	Nay	Heliker	-	Nay
6	Choate	-	Aye	Holland	-	Excused
7	Conover	-	Nay	Jacobsen	-	Aye
8	Cross	-	Nay	James	-	Nay
9	Dahood	-	Absent	Johnson	-	Aye
10	Davis	-	Aye	Joyce	-	Nay
11	Delaney	-	Aye	Kamhoot	-	Aye
12	Driscoll	-	Nay	Kelleher	-	Nay
13	Drum	-	Nay	Leuthold	-	Aye
14	Eck	-	Nay	Loendorf	-	Nay
15	Erdmann	-	Aye	Lorello	-	Nay
16	Eskildsen	-	Aye	Mahoney	-	Aye
17	Etchart	-	Aye	Mansfield	-	Nay
18	Felt	-	Absent	Martin	-	Nay
19	Foster	-	Nay	McCarvel	-	Aye
20	Furlong	-	Nay	McDonough	-	Nay
21	Garlington	-	Nay	McKeon	-	Nay
22	Gysler	-	Nay	McNeil	-	Nay
23	Habedank	-	Absent	Melvin	-	Nay
24	Hanson, R. S.	-	Aye	Monroe	-	Nay
25	Hanson, R.	-	Aye	Murray	-	Nay

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Noble	-	Aye	Skari	-	Nay
Nutting	-	Aye	Sparks	-	Nay
Payne	-	Excused	Speer	-	Nay
Pemberton	-	Aye	Studer	-	Aye
Rebal	-	Nay	Sullivan	-	Nay
Reichert	-	Nay	Swanberg	-	Aye
Robinson	-	Nay	Toole	-	Nay
Roeder	-	Nay	Van Buskirk	-	Absent
Rollins	-	Nay	Vermillion	-	Nay
Romney	-	Nay	Wagner	-	Nay
Rygg	-	Nay	Ward	-	Aye
Scanlin	-	Absent	Warden	-	Nay
Schiltz	-	Nay	Wilson	-	Aye
Siderius	-	Nay	Woodmansey	-	Nay
Simon	-	Aye	Mr. President	-	Nay

CLERK HANSON: Mr. Chairman, twenty-seven Delegates voting Aye, sixty-two voting No.

CHAIRMAN GRAYBILL: Sixty-two Delegates having voted No and twenty-seven Aye, Mr. Wilson's amendment is defeated. Mr. McNeil, did you want to make an amendment?

DELEGATE McNEIL: Mr. Chairman, I move to amend section six, page twelve at line thirteen, by adding after the word, members, the following three words, quote, present and voting, close quote.

Mr. Chairman.

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CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: I think the intent of the motion is obvious. If a majority of this Convention wants the legislature to be able to have this vote, I think it ought not to be -- the intent ought not to be defeated by absenteeism. I close.

CHAIRMAN GRAYBILL: Mr. McNeil has proposed an amendment to line thirteen by adding after the word, members, there the words, present and voting, so the sentence would read: by a three-fifths vote of the members present and voting of each house of the legislative assembly, et cetera. Is there discussion?

Mr. Rygg.

DELEGATE RYGG: I would like to resist that motion. I am willing to compromise all right and I think we have a sufficient hammer there, but I think we should stay at the three-fifths of each house. I really believe this would be going a little too far the other way.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. McNeil's amendment, proposed amendment to add the words, present and voting,on line thirteen so that the sentence would read: by a three-fifths vote of the members present and voting of each house of the legislative assembly, et cetera. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

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DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it and so ordered. Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, a little while ago, Delegate Mahoney was talking about this three-fifths, so I move to amend on line thirteen by deleting the words, three-fifths, and in place thereof inserting the words, two-thirds. I feel that probably this should be a real good compromise between the people who want to strike it entirely and the other way. Two-thirds of the members of each house, or the one house if that's what it is, is a real tough one to get. I think it will satisfy my problems of wanting to make them a little more responsive and I would hope that the body will accept it.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, I rise in support of increasing that number. At least we'll get two-thirds of our highway system and when two-thirds get their roads, they can take the money for welfare in their areas. Thank you. I support it.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, I rise in opposition to the motion. I think that by indicating our desire for a three-quarters vote we are showing a complete distrust of the legislature, and I think probably disallowing effectively any control of the legislature over the highway department. It's

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my feeling, Mr. Chairman, that three-fifths has the effect of one hundred -- three-fourths, excuse me, has the effect of one hundred percent and is totally unacceptable to the members of my committee.

CHAIRMAN GRAYBILL: Right. It's two-thirds, not three-fourths. Very well, the motion arises on -- the issue arises on Mr. Gysler's motion to change the number, three-fifths, to two-thirds in line thirteen on the committee report.

DELEGATE ROD HANSON: Roll call vote.

CHAIRMAN GRAYBILL: A roll call vote having been called for, all those in favor of changing three-fifths to two-thirds, which has the effect of raising it, please vote Aye, and those that oppose it vote No. Have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please tally the vote.

Aasheim	-	Aye	Artz	-	Aye
Anderson, J.	-	Aye	Ask	-	Aye
Anderson, O.	-	Absent	Babcock	-	Aye
Arbanas	-	Absent	Barnard	-	Aye
Arness	-	Excused	Bates	-	Aye
Aronow	-	Aye	Belcher	-	Absent

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1	Berg	-	Aye	Felt	-	Absent
2	Berthelson	-	Nay	Foster	-	Nay
3	Blaylock	-	Nay	Furlong	-	Nay
4	Blend	-	Nay	Garlington	-	Nay
5	Bowman	-	Nay	Gysler	-	Aye
6	Brazier	-	Aye	Habedank	-	Absent
7	Brown	-	Nay	Hanson, R. S.	-	Aye
8	Bugbee	-	Nay	Hanson, R.	-	Aye
9	Burkhardt	-	Nay	Harbaugh	-	Nay
10	Cain	-	Aye	Harlow	-	Nay
11	Campbell	-	Nay	Harper	-	Nay
12	Cate	-	Nay	Harrington	-	Nay
13	Champoux	-	Nay	Heliker	-	Nay
14	Choate	-	Aye	Holland	-	Excused
15	Conover	-	Nay	Jacobsen	-	Aye
16	Cross	-	Nay	James	-	Nay
17	Dahood	-	Absent	Johnson	-	Aye
18	Davis	-	Aye	Joyce	-	Nay
19	Delaney	-	Aye	Kamhoot	-	Aye
20	Driscoll	-	Nay	Kelleher	-	Nay
21	Drum	-	Nay	Leuthold	-	Aye
22	Eck	-	Nay	Loendorf	-	Nay
23	Erdmann	-	Aye	Lorello	-	Nay
24	Eskildsen	-	Aye	Mahoney	-	Aye
25	Etchart	-	Aye	Mansfield	-	Aye

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Martin	-	Nay	Scanlin	-	Absent
McCarvel	-	Nay	Schiltz	-	Nay
McDonough	-	Nay	Siderius	-	Nay
McKeon	-	Nay	Simon	-	Aye
McNeil	-	Nay	Skari	-	Aye
Melvin	-	Aye	Sparks	-	Nay
Monroe	-	Nay	Speer	-	Nay
Murray	-	Aye	Studer	-	Aye
Noble	-	Aye	Sullivan	-	Nay
Nutting	-	Aye	Swanberg	-	Aye
Payne	-	Excused	Toole	-	Nay
Pemberton	-	Aye	Van Buskirk	-	Absent
Rebal	-	Nay	Vermillion	-	Nay
Reichert	-	Nay	Wagner	-	Aye
Robinson	-	Nay	Ward	-	Aye
Roeder	-	Nay	Warden	-	Nay
Rollins	-	Nay	Wilson	-	Aye
Romney	-	Nay	Woodmansey	-	Nay
Rygg	-	Nay	Mr. Chairman	-	Nay

CLERK HANSON: Mr. Chairman, thirty-eight Delegates voting Aye, fifty-one voting No.

CHAIRMAN GRAYBILL: Thirty-eight Delegates having voted Aye and fifty-one voting No, Mr. Gysler's amendment is defeated. Mr. Heliker, are you up?

DELEGATE HELIKER: Mr. Chairman, will Delegate Rygg

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yield to a question?

CHAIRMAN GRAYBILL: Mr. Rygg?

DELEGATE RYGG: I'll yield.

DELEGATE HELIKER: Mr. Rygg, before I make it as a motion, I'd like to inquire of you your reaction to the possibility of inserting on line sixteen on page twelve, before the last word of the sentence, between other and purposes, the word, related.

DELEGATE RYGG: I'm sorry. Line ten on page twelve, did you say?

DELEGATE HELIKER: So that it would read, other related purposes.

CHAIRMAN GRAYBILL: The last line, Mr. Rygg, on page sixteen -- line sixteen, page twelve. Such dedicated funds may be appropriated for other related purposes.

DELEGATE RYGG: I don't really know what you mean but I think I'd probably oppose it.

(Laughter)

DELEGATE HELIKER: Well, maybe I should explain what I mean. Mr. Chairman, may I inquire further?

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: It has been said here that this sentence would give the legislature the authority to appropriate funds originating in these sources for welfare or for education or for any purpose whatsoever. Let me ask first of all,

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is that the intention?

DELEGATE RYGG: Well, the way it reads, yes, it would be strictly up to the legislature. That's true.

DELEGATE HELIKER: All right, then, if you were to insert related it would confine the legislature to appropriations for purposes related to the above listed things. I would assume the word, related, and I would expect the word, related, to be broadly construed so it might be a fairly large category of things. Now, do you understand my question?

DELEGATE RYGG: Yes, I understand it. I think that maybe that might be acceptable. I can't speak for the rest of the committee, however, but I think that maybe that would be acceptable. I'm such a nut for going for the majority report it's pretty hard for me to deviate. That's my problem.

DELEGATE HELIKER: Well, Mr. Chairman, with that much encouragement I will make that motion and I'd like to speak on it if I may. I, like Mr. Foster --

CHAIRMAN GRAYBILL: Wait a minute. Wait a minute. The Chair will give you the floor in a minute. That's in line sixteen. Very well, the Chair will accept an amendment from Mr. Heliker on line sixteen of the section six which adds the word, related, between the words, other and purposes, so that line sixteen reads: funds may be appropriated for other related purposes.

Mr. Heliker.

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DELEGATE HELIKER: Mr. Chairman, I, like Delegate Foster, count myself as an idealist but one of my ideals is that I think when sales taxes of any kind, including specific sales taxes which in this case has many of the characteristics of a general sales tax because it applies to and is paid for by most of us -- when such taxes are levied they ought to be levied to provide specific benefits to those who pay them and I think that we should not open up the possibility of the legislature using this gasoline tax and the other related taxes as, in effect, a general sales tax to finance the general government of Montana. I would, therefore, like to see the use of these funds restricted to the general purposes, and this is a pretty broad area, for which they were originally passed.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I would like to observe that every potential other related purposes have been already recited in here and it seems to me that this amendment is totally meaningless.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I oppose this motion because I think it fairly effectively undoes what we have spent so much time doing; namely, keeping this section of the article in. We raise taxes from cigarettes that do not go to cigarette smokers or even to related causes. The same with alcohol. The same with property. Taxes raised from property aren't all spent

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on property. Or, necessarily, income doesn't bring you more income, and so forth. I don't think that Mr. Heliker's line of reasoning in this case is helpful and I suggest we stay with what we've already done at such great length.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, would Mr. Heliker yield to a question?

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: I yield.

DELEGATE McKEON: Mr. Heliker, related purposes is rather vague. In your mind, could related purposes include pollution control -- automobile pollution control?

DELEGATE HELIKER: As I said, Mr. McKeon, I would expect and it is my intention that the word, related, be broadly construed and I think it would cover pollution control, which is related to the use of highways and that means automobiles.

DELEGATE McKEON: Thank you, Mr. Chairman. Thank you, Mr. Heliker.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I'm sorry to have to talk again but you see, I'll have to tell the professor, I don't think very well on my feet and after I sat down so I could think again, I don't believe I could support that amendment, and I wanted to tell you that before it came to a vote. After all afternoon here, too, I've been wondering -- I hear the lawyers talking

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about when they have interests, and so I suppose I should have mentioned at the beginning that I am a member of M.A.D.A. However, because of my action and vote here, I don't know whether I will be much longer.

(Laughter)

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman, I, too, would rise to oppose Mr. Heliker's motion. I think it is confusing. I think our original intent in drawing this article was to rely on the wisdom of the legislatures -- legislators and legislatures of future years and I feel that the inclusion of that word would weaken the intent of our original article. I oppose Mr. Heliker's motion.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. President, I'm happy to be included with Mr. Heliker as an idealist, but I certainly oppose his amendment.

CHAIRMAN GRAYBILL: Very well, the question arises on Mr. Heliker's motion to add on line sixteen the word, related, between other and purposes so that it reads: funds may be appropriated for other related purposes. Mr. Heliker, do you want to close, or do you want a roll call vote?

DELEGATE HELIKER: I would like to close, Mr. Chairman.

CHAIRMAN GRAYBILL: O.K.

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DELEGATE HELIKER: I reiterate that I think you should think closely about this in terms of what door you are opening for the enactment of what amounts to a general sales tax when the people have just resoundingly defeated same.

CHAIRMAN GRAYBILL: Very well, the question arises on Mr. Heliker's motion to add the word, related. So many as shall favor that, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as opposed, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's defeated. Now, it is the intention of the Chair to offer a substitute amendment but not until we have adopted section six, at least in principle. Are there other amendments to section six? In other words, the Chair wants section six and the other one. If there are no other amendments to section six, without moving that we adopt it finally, would someone -- Mr. Rygg, would you at least put the question on section six without moving it finally?

DELEGATE RYGG: I don't know just how to do that. I'll put the question on six without moving it finally, if that's what you like.

(Laughter)

CHAIRMAN GRAYBILL: That's one of the best ways to do it, Mr. Rygg.

(Laughter)

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CHAIRMAN GRAYBILL: All those in favor of section six as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All right, the Ayes have it.

UNIDENTIFIED DELEGATES: It wasn't amended.

CHAIRMAN GRAYBILL: All right, it's unamended then. There aren't any amendments to it.

(Delegate Aasheim assumes chairmanship of Committee of the Whole.)

CHAIRMAN AASHEIM: The assembly will be in order. Mr. Graybill.

DELEGATE GRAYBILL: Mr. Chairman, you have before me an amendment proposed by me, or an addition proposed by me, and you'll see if you read the line where it says, Mr. Chairman, I move to add as an alternative to section six on the ballot, the following, and then I put in this paragraph that some of you have been talking about. Now, my purpose here is, I want in the Constitution the committee's proposal with the two-thirds. I want it in that way. But, I do think this Convention faces a serious challenge because we have been put on notice by a whole long list of people, including those that Mrs. Babcock read, and some others, that they are going to oppose this Constitution if we put that in and, to be quite frank

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about it, we've been told they're going to oppose it even if we put it in with the two-third -- or the three-fifths in it, so we've been put on notice that they are going to oppose it. Now, you know, I don't mind that. Everybody has a right to oppose it, but it does seem to me that if they are going to oppose it we should go with our best shot, and I think maybe our best shot might be to add another alternative for the public so that the public would have a choice of the anti-diversion amendment, as amended here with the two-thirds -- three-fifths proposal, or a slightly broader concept and then the public could choose between them. Now, the source of section six, as I have proposed it here, really is originally one (b) with some changes in it, and the main changes are that on line three we have used the phrase, public transportation facilities, and down below we have said that the money can be spent for public transportation facilities, the concept being to simply broaden the use from strictly highways, or even highways and streets, to public transportation facilities -- the reason being that we are writing a Constitution for quite a long time. If you'll just think with me a minute, there was hardly any highway problem at all when the first Constitution was written, at least in the sense we know it now, and I don't think that any of us can honestly foresee what the transportation problem will be in, say, fifty years. So, the only purpose of this is to give the public an alternative where they can vote broadly

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to say that they wanted funds earmarked from transportation -- from any funds from any public transportation facility to be earmarked for public transportation facilities. It broadens both the intake and the outgo, and up in the first line where it says, derived from fees, we have added, and charges. I happen to know something about airport financing and there's a lot of charges involved and fees involved in airport financing and this would have the effect of requiring that airport charges be spent on at least public transportation facilities. And, the only purpose, really -- and I don't really mind if you kill it -- but, the only purpose, really, is to offer an alternative to the public so that they could either vote for section six with the three-fifths, or vote for a section which is broadly construed, which still earmarks but earmarks only in a broad category of public transportation facilities. Now, it's just that simple but I think that if it's useful, we ought to give both alternatives to the people and if it isn't useful, why, we'll run our chances, I guess, with what the committee came up with. That's all I have to say.

CHAIRMAN AASHEIM: Any discussion of the addition? Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, will Mr. Graybill yield to a question?

DELEGATE GRAYBILL: I yield.

DELEGATE JOHNSON: Leo, I --

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CHAIRMAN AASHEIM: Mr. Johnson, I think we'd better read this first so we'll have it in the journal. Will the Clerk read this addition and then you'll have the floor.

CLERK HANSON: (Reading) Mr. Chairman, I move to add, as an alternative to section six, on the ballot, the following: Section six. Revenue derived from fees and charges, and from fines and forfeitures relating to registration, operation or use of vehicles on public transportation facilities, and from excise or license taxes on fuels and other energy sources used for propulsion of such vehicles shall be used solely for payment of obligations incurred for the development, construction, reconstruction, repair and maintenance of public transportation facilities, a state highway patrol system, and tourist promotion and administration costs as authorized by the legislative assembly. Signed, Graybill. (End reading)

CHAIRMAN AASHEIM: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, Mr. Graybill.

DELEGATE GRAYBILL: Yes, Mr. Johnson.

DELEGATE JOHNSON: I'm concerned about your last line there, as authorized by the legislative assembly. Would you clarify for me what looks to me a close relationship to the entire last sentence of section six, except it would be, I presume, a majority vote. Is that -- am I mistaken?

DELEGATE GRAYBILL: I don't quite understand your question, Mr. Johnson.

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DELEGATE JOHNSON: Well, I must illustrate then. It looks to me like here on your proposal that the legislative assembly would have the power to do just what this three-fifths vote of the members in each house -- you see, the last sentence on the section six that we were trying to delete a while ago?

DELEGATE GRAYBILL: You mean because it says that it's as authorized by the legislative assembly it's the same as the three-fifths, or in fact it's a fifty-fifty --

DELEGATE JOHNSON: Well, I'm concerned about it, yes, sir.

DELEGATE GRAYBILL: I think it is. I think it's as broad as the three-fifths language, or perhaps broader.

DELEGATE JOHNSON: Thank you, sir. Thank you, Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Davis.

DELEGATE DAVIS: Mr. Chairman, will Mr. Graybill yield, please, to a question?

CHAIRMAN AASHEIM: Will you yield, Mr. Graybill?

DELEGATE GRAYBILL: Yes.

DELEGATE DAVIS: Leo, as I read this, it would seem to me that yours is just a total turning it over to the legislature, not a compromise anti-diversion that requires three-fifths, but just leaves it all right to the legislature.

DELEGATE GRAYBILL: Well, -- Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Graybill, you may answer.

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DELEGATE GRAYBILL: Mr. Davis -- and I may have answered Mr. Johnson slightly wrong -- what mine says is that it's left up to the legislature all right, but I think it differs from the three-fifths in that it restricts the legislature to public transportation facilities uses. In other words, it does what the last related amendment tried to do in the sense that the legislature can determine where within the field of public transportation facilities the money can be spent, but the legislature could not take it out of public transportation facilities. Do you follow me, Mr. Johnson and Mr. Davis?

DELEGATE DAVIS: Well, I don't see where it says that they can't just spend it without diverting it. Oh, it's limited by your last sentence. I see.

DELEGATE GRAYBILL: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Graybill, you may answer.

DELEGATE GRAYBILL: I think it -- I think it will -- I think it will allow the legislature to divert but only within the area of public transportation facilities, Mr. Davis.

DELEGATE DAVIS: Will Mr. Graybill yield to another question?

CHAIRMAN AASHEIM: Mr. Graybill, will you yield?

DELEGATE GRAYBILL: I'm beginning to feel like Mrs. Bowman, but yes, I'll yield.

DELEGATE DAVIS: You have fines and forfeitures included in there. What did you have in mind and what does this

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encompass?

DELEGATE GRAYBILL: Well, I'm willing to throw into the pot all fines and forfeitures which come from registration, operation or use of vehicles on public transportation facilities. In other words, traffic fines and so forth--any fines or any that come from the public transportation field would have to stay in the public transportation field, but it is broader than just the automobile. It's the whole public transportation field.

DELEGATE DAVIS: I'll ask him if he'll yield again.

DELEGATE GRAYBILL: Yes, sir.

DELEGATE DAVIS: I don't know how much money we're talking about, but that comes out of the school funds, don't some of these fines and forfeitures? Where do they all go? Do they all go back to the highway?

DELEGATE GRAYBILL: You'll have to ask Mr. Furlong about that. I don't know where they come from. I'm just willing to leave them in the transportation field.

DELEGATE DAVIS: Mr. President.

CHAIRMAN AASHEIM: Mr. Davis.

DELEGATE DAVIS: I'm wondering if we're opening up another can of worms by whom we're taking the fines and forfeitures away from, rather than getting some more people upset.

CHAIRMAN AASHEIM: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, under Mr. Graybill's

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amendment they are getting substantial revenues back that section six took away from them. Fines and forfeitures are in excess of a million dollars.

CHAIRMAN AASHEIM: Mr. Harper.

DELEGATE HARPER: Will Mr. Graybill yield to another question?

CHAIRMAN AASHEIM: Will you yield, Mr. Graybill?

DELEGATE GRAYBILL: I'll yield.

DELEGATE HARPER: Did you deliberately leave out driver education, which this body, by a vote of seventy-nine to eight, expressed an interest in keeping or is it an oversight on your part? When you list all the different possible things that the money might be used for in highway related enterprises, you did not put in driver education and I remind you that Mr. Aasheim made that very motion today on the majority proposal and his motion to delete driver education lost seventy-nine to eight. Do you want us to go through that fight again, or are you willing to put it in your --

DELEGATE GRAYBILL: I'm perfectly willing to put it in but I -- the reason it's not in there now is, at the time I drafted this, we were talking about -- I drafted it, really, from another base which did not have driver education in, but it's immaterial to me whether it's in or out.

DELEGATE HARPER: Will you add it, or shall I make a motion?

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DELEGATE GRAYBILL: Well, to get the issue resolved, I'll add it and when -- if this happens --

CHAIRMAN AASHEIM: Mr. Harper, will you make the motion so we'll get it in the record?

DELEGATE GRAYBILL: Very well, make the motion.

DELEGATE HARPER: Yes, Mr. Chairman. I move that on the next to the last line on Mr. Graybill's proposal, following the comma, following the word, system, at the beginning of the next to the last line, the words, driver education and comma be inserted. If that's not exactly the proper place for it, Style and Drafting can care for it.

CHAIRMAN AASHEIM: Any further discussion?

Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, will Mr. Graybill yield to a question?

CHAIRMAN AASHEIM: We are on the motion to amend now, Mr. Melvin. We are on the motion to amend, as presented by Mr. Harper. Any more discussion on the amendment?

Mr. Wilson.

DELEGATE WILSON: Mr. President.

CHAIRMAN AASHEIM: Mr. Wilson.

DELEGATE WILSON: Speaking about the amendment, I would like to call attention to what has been left out of section one (b), which should be of concern to any agricultural interests here. Statutory refunds and adjustments provided

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therein. Now what you have done, you have eliminated the possibility of a farmer or anyone who uses gasoline off the highways of getting a refund on this gas that is used.

CHAIRMAN AASHEIM: Mr. Wilson, you are talking about something that is beyond the amendment. We are talking about the amendment as presented by Mr. Harper. Any more discussion on the amendment?

Mr. Berg.

DELEGATE BERG: Would Mr. Graybill yield to a question?

CHAIRMAN AASHEIM: Mr. Graybill, will you yield?

DELEGATE GRAYBILL: Yes, Mr. Berg.

DELEGATE BERG: Does your measure include revenue from general sales and use taxes on cars?

CHAIRMAN AASHEIM: Mr. Berg, we are talking about this amendment by Mr. Harper. I think you are out of order.

DELEGATE GRAYBILL: He wants to stay on driver education.

CHAIRMAN AASHEIM: We want -- we're talking about the amendment by Mr. Harper.

Mrs. Babcock.

DELEGATE BABCOCK: Can't I talk about Mr. Graybill?

CHAIRMAN AASHEIM: Certainly not.

(Laughter)

CHAIRMAN AASHEIM: Are you ready for the amendment

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by Mr. Harper to include in the second line from the bottom, after system, driver education, comma, and tourist promotion -- to include driver education. As many as are in favor of including driver education, say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Contrary?

DELEGATES: No.

CHAIRMAN AASHEIM: The motion is carried. Now, we're on the motion.

Mr. Berg.

DELEGATE BERG: Mr. Chairman, will Mr. Graybill yield to a question?

CHAIRMAN AASHEIM: Will you yield, Mr. Graybill?

DELEGATE GRAYBILL: Yes, sir.

DELEGATE BERG: It's the same question. I want to know if your amendment will include revenue from general sales and use taxes from automobile sales.

DELEGATE GRAYBILL: It covers fees from registration.

DELEGATE BERG: But that would not be the tax on the sale of a new car, would it?

DELEGATE GRAYBILL: And, to my way of reading it, it would not include the property tax on the car.

DELEGATE BERG: And then, a second question.

CHAIRMAN AASHEIM: Mr. Berg.

DELEGATE BERG: Will Mr. Graybill yield?

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CHAIRMAN AASHEIM: Mr. Graybill, will you yield?

DELEGATE GRAYBILL: I yield.

DELEGATE BERG: Under your proposal, would it be possible for gasoline taxes from the sale of ordinary gasoline, that is, automobile gasoline, to be by the legislature appropriated, for example, for airport purposes and vice versa-- gasoline sales for airport purposes used for highway development?

DELEGATE GRAYBILL: Yes, it certainly would. The purpose of this is to allow the legislature free rein within the public transportation area to move the money around where the legislature thinks it ought to go. That's the purpose of this.

DELEGATE BERG: And would you construe the section six in the majority report as permitting that kind of power or use by the legislature?

DELEGATE GRAYBILL: No, it does not allow that because it limits it to funds derived from use of public highways and it does not include airports or other transportation facilities -- parking lots, for example, or other systems that might be devised -- tunnels or rockets or whatever we have.

DELEGATE BERG: No further questions.

CHAIRMAN AASHEIM: Any more discussion?

Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, I've been listening

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all afternoon. I haven't spoken. I would like to make a point at this time. I have no objection if there's an alternative on the ballot. In fact, it might be a good idea. I don't think that anyone in this body wants to destroy the highway department or their highway system. I think what we do want is a highway department that is not autonomous, that is responsible to somebody and this is what I think is important in either alternative, and I'm not sure that we're getting that across.

CHAIRMAN AASHEIM: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, I rise in opposition to Mr. Graybill's amendment because I feel that if we are going to have an alternative on the ballot it should be section one (b). That's what the people want and you have the two different choices. This way we're cutting the pie in three pieces.

CHAIRMAN AASHEIM: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, will Mr. Graybill yield to a question?

CHAIRMAN AASHEIM: Will you yield, Mr. Graybill?

DELEGATE GRAYBILL: Yes.

DELEGATE MELVIN: Mr. Graybill, in the second line, fines and forfeitures relating to registration, operation or use of vehicles on public transportation facilities, would this mean that fines and forfeitures collected by a city police department and sheriffs' offices would also go into this fund?

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DELEGATE GRAYBILL: I think it does.

DELEGATE MELVIN: Thank you.

DELEGATE GRAYBILL: It isn't a fund. It's a matter of whether the legislature can divert it. It might not be diverted. In other words, the legislature might not divert it from a city use but the legislature would have the right to divert it anywhere within the public transportation facilities area.

DELEGATE MELVIN: Another question, Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Graybill, will you yield?

DELEGATE MELVIN: Well, as I read it, Mr. Graybill, at the end of line five it says, shall be used solely for the payment. Is that -- that would indicate that there's no choice?

DELEGATE GRAYBILL: Shall be used solely for payment of obligations incurred in the development, construction, reconstruction, repair and maintenance, and so forth, of public transportation facilities. So, if the fines are now being used for the city's general fund for non-transportation purposes, it would divert them, but if they were being used for highway safety or for police department highway programs, street programs, they would not be diverted.

DELEGATE MELVIN: Thank you.

DELEGATE GRAYBILL: Yes.

CHAIRMAN AASHEIM: Mrs. Robinson.

DELEGATE ROMNEY: (Inaudible. Microphone not turned

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on.)

CHAIRMAN AASHEIM: Mrs. Robinson has the floor.

DELEGATE ROMNEY: (Inaudible. Microphone still not turned on.)

DELEGATE ROBINSON: I'll yield to Mr. Romney.

DELEGATE ROMNEY: (Inaudible. Microphone not turned on.)

DELEGATE ROBINSON: Thank you. Mr. Chairman, I'm not so much in opposition to putting this on the ballot as an alternative, but I'm in opposition to really what I think we are implying when we do this. I guess I rather resent being threatened by these powerful lobbyists, that they're going to torpedo what we do if we don't submit to their demands. I see a real hypocricy in this body today. Everything -- well, not everything -- but a great many of the things I've been for in this Constitutional Convention, such as poll booth registration, a people's advocate, the right to sue, standards for reclamation of our land -- everybody says, go to the legislature, that's legislative, that's not constitutional. So, now we're saying that highways are constitutional. People aren't and people's rights aren't, but highways are. I think this is ridiculous. Everything you people have been against, you've said it's legislative. Well, if this isn't legislative, I don't know what is. I guess it's a matter of priorities and I guess it's too bad environmentalists don't have the kind of

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lobbying effort that some of these other people do. Mr. Mahoney was concerned that this next session of the legislature wouldn't appropriate money for the highways. Well, I'll contend that with people like the Chamber of Commerce and the AFL-CIO and the bureau of public roads and the iron and steel institute and the petroleum institute and the National Association of Manufacturers, the Timber Products Association, and all of these things lobbying that lobbied for this revenue in 1955, they'd be silly to do anything else but appropriate money for roads. I just think that -- I guess I don't really care whether we put it on the ballot or not because I think, you know, we've really made the basic decision in this body that a few powerful lobbyists can tell us what to do, regardless of the principles that we've established before, that we're not -- in some instances we're writing a constitution, but if you believe in something you're going to say it's constitutional, and if you don't believe in something, you say it's statutory.

CHAIRMAN AASHEIM: Mr. Romney.

DELEGATE ROMNEY: Thank you, Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Romney.

DELEGATE ROMNEY: I dislike disagreeing with my seatmate, Mrs. Robinson, but I think this is a matter which was born of the ballot of the people and it should be resolved, so it probably should go onto the ballot. Mr. Chairman, in this connection, I would like to ask a question of the President of

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the Convention.

CHAIRMAN AASHEIM: Mr. Graybill, will you yield to a question?

DELEGATE GRAYBILL: Yes, sir.

DELEGATE ROMNEY: Mr. Graybill, in view of the fact that you and Delegate Toole and no doubt others consider it necessary to put this on the ballot, and I'm not so sure that it's not a wise move in view of the fact that the anti-diversionary measure came onto the ballot as a vote -- or, came into being as a vote of the people -- I'm not so sure that the alternative you are offering is not the right one. I wonder what you think about the suggestion of Delegate Babcock about placing the old section one (b) on as the alternative. That is the alternative--not something new.

CHAIRMAN AASHEIM: Do you want to answer that, Mr. Graybill?

DELEGATE GRAYBILL: Yes, I'm going to try. I think that the lobbyists and the groups, and there are very many interest groups that have real interest here, who threaten to oppose the Constitution -- I don't think we need to put their position on as an alternative because the truth of the matter is, their alternative is the present Constitution, and if you put it as an alternative they've got two shots at it. It seems to me that what I'm trying to do, and I must admit that I am probably unfair in Mrs. Robinson's eyes, I'm trying to give the

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public two good choices, and if they happen to vote for either of them, we're in. Now, I'll admit that that may be diabolical but that's what I'm trying to do. The interest groups' alternative is to vote the other way and I don't think you're going to get them to come on and vote for an alternative when all they have to do is vote against the Constitution, which is what they have threatened to do. Maybe I'm wrong. That's my view.

CHAIRMAN AASHEIM: Mr. Romney.

DELEGATE ROMNEY: Maybe the President is wrong, maybe I'm wrong, and maybe Mrs. Robinson is wrong, and maybe Mrs. Babcock is wrong, maybe the pressure groups are wrong. But, if we're going to put this on the ballot, it seems to me that the alternative is the old section. It seems to me that when a day or so ago we were debating in the judiciary article, we were debating about the judges running against their record. That's what this would be. The people would be voting against the record of the anti-diversionary with the choice of another article.

CHAIRMAN AASHEIM: Mrs. Erdmann.

DELEGATE ERDMANN: Would President Graybill yield to a question?

CHAIRMAN AASHEIM: Will you yield, Mr. Graybill?

DELEGATE GRAYBILL: Yes.

DELEGATE ERDMANN: I stand in opposition to this

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alternative and I wonder if you realize by the wording of this that you would be torpedoing the general fund of the city of Great Falls? The phrase you have in here, as Mr. Melvin said, in which fines and forfeitures relating to operation of vehicles on the city streets I'm sure would be included in this, would have to go for highway or some such purpose, street department or anything like this, related, wouldn't it?

DELEGATE GRAYBILL: It would have to go for some public transportation facility but I can tell you, and I'm sure you'll agree with me, Mrs. Erdmann, that there are all kinds of public transportation facilities that the city of Great Falls could spend that money for and, in fact, does today. When we put the fines into the general fund, they come right back out and pave the alley or grade the street.

DELEGATE ERDMANN: No, sir. The street department has a separate mill levy. The general fund, where we're so desperately pressed for --

DELEGATE GRAYBILL: I see.

DELEGATE ERDMANN: -- funds pays for police and the fire department and those other items. Street department levies are separate, so this is something to take into consideration. In Great Falls it amounts to about a hundred a sixty thousand dollars a year, the equivalent of two mills of property tax.

DELEGATE GRAYBILL: Mr. Chairman.

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CHAIRMAN AASHEIM: Yes, Mr. Graybill.

DELEGATE GRAYBILL: Well, then, I guess, Mrs. Erdmann, we need an anti-diversion amendment in Great Falls now because they are taking money from people for highway fines and doing other than highway things with them, and the purpose of this would be to keep public transportation funds in the public transportation field. It might involve some shifting of funds, but notice that it's all still within the legislative assembly's prerogative. Nobody is making them move them at all. It just gives the legislature the right to move them if they ever needed to.

CHAIRMAN AASHEIM: Mr. McNeil, you are wanting to make a comment?

DELEGATE McNEIL: (No audible response.)

CHAIRMAN AASHEIM: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, will Mr. Romney yield to a question, please?

CHAIRMAN AASHEIM: Mr. Romney, will you yield?

DELEGATE ROMNEY: Certainly.

DELEGATE REICHERT: Mr. Romney, you mentioned having the old section one (b) as an alternative. I think there's an analogy here with what we've done with the unicameral-bicameral. Now, we're not offering the old bicameral as an alternative. We're going to offer a new bicameral and the unicameral, and the old bicameral will be in the body of the Constitution, just

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as the old section one (b) will be in the body of the Constitution. I concur with Mr. Graybill that if we are going to have an alternative, we should have one. But, it is my feeling, Mr. Chairman, that we should establish the fact first whether we want an alternative and then perhaps we should perfect an alternative, think about an alternative, rather than just accepting this with the questions that have arisen.

CHAIRMAN AASHEIM: Mr. Rollins.

DELEGATE ROLLINS: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Rollins.

DELEGATE ROLLINS: I wish to speak against the idea of compromise, the idea of alternative, rather. I don't think we came here to talk things over and then say -- go back to the people and say, here are a couple of ideas we had--what do you think? I feel resentment that there wasn't a clear cut vote on the unicameral or bicameral legislature. There still could be, perhaps, and I hope there is. I'm in favor of deciding which plan we want here and if we settle on one, put it in the Constitution and submit the Constitution to the people. I don't know whether Hamlet was right or Laertes was right, but because Hamlet couldn't make up his mind, at the final scene of the play they were all dead, and I don't want that kind of a thing to occur here. I will vote for the plan that I think is proper. I support the majority plan and I hope that we can submit whatever we have to the people without any alter-

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natives. Thank you.

CHAIRMAN AASHEIM: Mrs. Eck.

DELEGATE ECK: Mr. Chairman.

CHAIRMAN AASHEIM: Mrs. Eck.

DELEGATE ECK: I really like the looks of Mr. Graybill's plan. I think the idea of looking at public transportation as a whole, rather than just automotive transportation, is probably something we should have thought about earlier. However, I feel if we have alternatives on the ballot that these are going to be two very confusing alternatives. I think I, myself, would have a very difficult time choosing between them. I think that if we decide we want an alternative on the ballot, it might be a good idea to re-think the two of them and develop one good article which would do this, which would really be pretty much possible. I was thinking of Mr. Heliker's amendment at the end. We could almost say, and other uses of public transportation or related to public transportation. However, then, we would also have to add at the beginning, so far as where these funds come from. I really think our alternatives should be either, as Mrs. Babcock says, put something that is going to be wholly satisfactory to all of these big interests that we seem to be afraid of on the ballot, and there would be some advantage having it there. You know, if we put that in the body of the Constitution, why, they might spend all those millions of dollars just going out and telling people,

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vote yes for our Constitution. It's got in there what we want. I still think that the people would prefer something else. I think everyone in our district campaigned on the basis that we were going to come here and delete the anti-diversion funds, or anti-diversion amendment. We, I think, had only one or two people who, for very obvious reasons, opposed us on this basis. We had only one candidate who ran on the basis of supporting this and he lost. I think the other really good alternative is to have an option on the ballot to take this out entirely. In other words, to put one in and give the voters an option of deleting one. But, I think that putting two good plans in an area that is really confusing and isn't going to get that much public attention anyway, and is going to have a lot of interests trying to obscure the real issues, is really a poor move and I think that what our discussion ought to evolve around at this point is, do we really want alternatives.

CHAIRMAN AASHEIM: Mrs. Pemberton.

DELEGATE PEMBERTON: Thank you, Mr. Aasheim. May I ask Mr. Murray a question?

CHAIRMAN AASHEIM: Mr. Murray, will you yield?

DELEGATE MURRAY: I'll yield.

DELEGATE PEMBERTON: Thank you, Mr. Murray. Possibly at this time it might be a good idea how we are going to present the Constitution finally to be voted by the public. Mr. Murray, will this be presented article by article, or sec-

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tion by section, or would you please describe the process?

DELEGATE MURRAY: Mr. Chairman.

CHAIRMAN AASHEIM: Yes, Mr. Murray.

DELEGATE MURRAY: Mrs. Pemberton, I believe that the present plans are to have the Constitution as we write it proposed in its entirety, with an explanation section by section, so you would vote for or against it. Then, with respect to the legislative article, as Illinois has proposed it and as I believe North Dakota just recently proposed it, there would be two alternatives below the vote on the Constitution as is, yes or no; would you want a bicameral or would you want a unicameral. And, with respect to this particular issue, I would think that maybe it could be handled: Do you want to retain or do you not -- do you want to have an anti-diversion amendment such as we have now or not. Or, perhaps as Mr. Graybill has proposed it here, you could have the majority section six in the body of the Constitution with an optional vote to have what he has proposed by way of his amendment here. So, I think really, Catherine, the answer is we can do it pretty much as we choose.

DELEGATE PEMBERTON: For those who would prefer the section one (b) as it is written into the present Constitution, where would that put that in the new Constitution if it were decided between two proposals?

DELEGATE MURRAY: Shoot that at me again, Catherine,

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would you please?

DELEGATE PEMBERTON: If it were decided between the section -- this new proposal and the section in the old Constitution, or in the present Constitution which refers to the same thing, where would that be written into the proposal so the people would have a choice?

DELEGATE MURRAY: As I understand your question, you would like to retain what has been proposed and turn down in one (b), which is the existing constitutional amendment?

DELEGATE PEMBERTON: Not necessarily turn it down-- give a choice to the people.

DELEGATE MURRAY: Yes, you would like to have it as is now in the constitutional amendment, right? And this alternative that the President has now proposed -- how would you handle that on the ballot?

DELEGATE PEMBERTON: Yes, that the majority proposal has so that the people could vote as they wished if this is so controversial.

DELEGATE MURRAY: Well, frankly, I would think that we could do it in any manner that we chose. That's my answer. I think that we could write one into the body and have the other as an option, or we could have both as options, with neither in the body.

CHAIRMAN AASHEIM: The Chair recognizes Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move the committee

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rise, report progress and ask leave to sit again.

CHAIRMAN AASHEIM: As many in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Contrary?

DELEGATES: (No audible response)

CHAIRMAN AASHEIM: Motion is carried. Please remain at ease for a moment. The Chair has missed his evening meal, but I guess that's better than losing it.

(Laughter)

(President Graybill presiding over Convention)

CLERK HANSON: March third, 1972 --

PRESIDENT GRAYBILL: Will the Clerk please read the title of the committee report?

CLERK HANSON: (Reading) March third, 1972. Mr. President, we, your Committee of the Whole, having had under consideration Report Number Seven of the Committee on Revenue and Finance, recommend as follows:

PRESIDENT GRAYBILL: Very well, Mr. Murray, do you want to move -- does anyone want the Committee of the Whole report read in its entirety?

DELEGATES: No.

PRESIDENT GRAYBILL: Very well, Mr. Murray, would

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make a motion that it be adopted?

DELEGATE MURRAY: Mr. President, I move that the Committee of the Whole report be adopted.

PRESIDENT GRAYBILL: Very well, all in favor say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

PRESIDENT GRAYBILL: So ordered. Now, before we adjourn, two announcements. First of all, the blue sheets you've got talks about the Delegate party next week. Please note that the date is now changed to Wednesday, the eighth, instead of Tuesday, the seventh. So, make note of that and if you have guests that you want to invite, you can do so. And, secondly, Mr. -- I see Mr. Rygg has gone. Mr. Rygg, do you want to announce your meeting?

DELEGATE RYGG: Revenue and Finance, room 437 at eight o'clock in the morning.

PRESIDENT GRAYBILL: Revenue and Finance in the morning, 437.

Mr. Blaylock.

DELEGATE BLAYLOCK: Bill of Rights meeting tomorrow morning, eight o'clock.

PRESIDENT GRAYBILL: Bill of Rights at eight o'clock.

Mr. Aasheim.

DELEGATE AASHEIM: Legislative Committee at eight-

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thirty. Bring your Style and Drafting forms with you and we will go over and check if we agree with what Style and Drafting has done.

PRESIDENT GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Style and Drafting at eight o'clock and we're going to have some conflicts with other committees so I urge everyone to be there.

PRESIDENT GRAYBILL: Are there any other announcements?

Mrs. Babcock.

DELEGATE BABCOCK: I would just like to announce for the benefit of the ladies that tomorrow night there is a Nile style show for the benefit of crippled children at the Civic Center, if any of you would like to go.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, the Rules Committee meeting at 8:15 in the morning, or right outside of the Rules Committee room because the Administrative Committee is meeting in the room, and are you ready to adjourn?

PRESIDENT GRAYBILL: I see Mr. Toole standing.

DELEGATE TOOLE: I was just going to make the announcement of the Administrative Committee meeting at 8:00 in the rules committee room.

DELEGATE MURRAY: Mr. President, I move that the Convention adjourn until the hour of nine A.M., March 4, 1972.

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PRESIDENT GRAYBILL: All in favor, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay.

DELEGATES: (No audible response)

PRESIDENT GRAYBILL: So ordered.

(Convention adjourned at 6:50 o'clock, P.M.)

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MONTANA CONSTITUTIONAL CONVENTION

March 4, 1972 38th Convention Day Convention Hall

9:11 o'clock A.M. Helena, Montana

PRESIDENT GRAYBILL: The Convention will be in order. The Convention will be in order. Will you all please stand, and Mr. Scanlin will give us the Invocation?

DELEGATE SCANLIN: The desciples came to Jesus saying, Lord teach us to pray. Let us pray together the prayer He taught us. Our Father, who art in Heaven, hallowed be thy name. Thy kingdom come, thy will be done on earth as it is in heaven. Give us this day our daily bread and forgive us our debts as we forgive our debtors, and lead us not into temptation, but deliver us from evil, for thine is the kingdom and the power and the glory forever, Amen.

PRESIDENT GRAYBILL: We'll take attendance this morning by voting Aye on the voting machines.

CLERK HANSON: Mr. President, may Delegates Arbanas, Arness, Belcher, Eskildsen and Holland be excused please?

PRESIDENT GRAYBILL: Arness is present. So, take that one out.

CLERK HANSON: May Delegate Felt also be excused?

PRESIDENT GRAYBILL: Yes.

CLERK HANSON: Delegate Babcock, Delegate Drum, Delegate Harlow, Delegate James, Delegate Speer.

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PRESIDENT GRAYBILL: Read the absences again.

CLERK HANSON: They're all here.

PRESIDENT GRAYBILL: Very well. Take the attendence.

Aasheim	-	Present	Campbell	-	Present
Anderson, J.	-	Present	Cate	-	Present
Anderson, O.	-	Present	Champoux	-	Present
Arbanas	-	Excused	Choate	-	Present
Arness	-	Present	Conover	-	Present
Aronow	-	Present	Cross	-	Present
Artz	-	Present	Dahood	-	Present
Ask	-	Present	Davis	-	Present
Babcock	-	Present	Delaney	-	Present
Barnard	-	Present	Driscoll	-	Present
Bates	-	Present	Drum	-	Present
Belcher	-	Excused	Eck	-	Present
Berg	-	Present	Erdmann	-	Present
Berthelson	-	Present	Eskildsen	-	Present
Blaylock	-	Present	Etchart	-	Present
Blend	-	Present	Felt	-	Excused
Bowman	-	Present	Foster	-	Present
Brazier	-	Present	Furlong	-	Present
Brown	-	Present	Garlington	-	Present
Bugbee	-	Present	Graybill	-	Present
Burkhardt	-	Present	Gysler	-	Present
Cain	-	Present	Habedank	-	Present

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1	Hanson, R. S.	-	Present	Monroe	-	Present
2	Hanson, R.	-	Present	Murray	-	Present
3	Harbaugh	-	Present	Noble	-	Present
4	Harlow	-	Present	Nutting	-	Present
5	Harper	-	Present	Payne	-	Present
6	Harrington	-	Present	Pemberton	-	Present
7	Heliker	-	Present	Rebal	-	Present
8	Holland	-	Excused	Reichert	-	Present
9	Jacobsen	-	Present	Robinson	-	Present
10	James	-	Present	Roeder	-	Present
11	Johnson	-	Present	Rollins	-	Present
12	Joyce	-	Present	Romney	-	Present
13	Kamhoot	-	Present	Rygg	-	Present
14	Kelleher	-	Present	Scanlin	-	Present
15	Leuthold	-	Present	Schiltz	-	Present
16	Loendorf	-	Present	Siderius	-	Present
17	Lorello	-	Present	Simon	-	Present
18	Mahoney	-	Present	Skari	-	Present
19	Mansfield	-	Present	Sparks	-	Present
20	Martin	-	Present	Speer	-	Present
21	McCarvel	-	Present	Studer	-	Present
22	McDonough	-	Present	Sullivan	-	Present
23	McKeon	-	Present	Swanberg	-	Present
24	McNeil	-	Present	Toole	-	Present
25	Melvin	-	Present	Van Buskirk	-	Present

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Vermillion	-	Present	Warden	-	Present
Wagner	-	Present	Wilson	-	Present
Ward	-	Present	Woodmansey	-	Present

CLERK HANSON: Mr. President, ninety-six Delegates present, four excused.

PRESIDENT GRAYBILL: Very well. The journal may so show. Order of Business Number One, Reports of Standing Committees? Will the clerk read the Style and Drafting Committee Report?

CLERK HANSON: Montana Constitutional Convention. The Committee on Style, Drafting, and Transmission and Submission transmits revisions of the executive article for consideration of the convention. John M. Schiltz, Chairman, William A. Burkhardt, Vice Chairman.

PRESIDENT GRAYBILL: The Style and Drafting Committee Report on the executive is referred to General Orders. Reports of Select Committees? None. Communications? None. Introduction and Reference of Delegate Proposals? None. Final Consideration? None. Adoption? None. Motions and Resolutions? None. On Number Seven, Motions and Resolutions, we do have a matter that we want to take up today, out of the Rules Committee, but we're going to pass that if it's all right with everyone, and take it up after we've finished Revenue and Finance. Hearing no objection, we'll do that. Unfinished Business?

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CLERK HANSON: None.

PRESIDENT GRAYBILL: Special Orders?

CLERK HANSON: None.

PRESIDENT GRAYBILL: General Orders?

Mr. Murray.

DELEGATE MURRAY: Mr. President. I move that the Convention resolve itself into Committee of the Whole for the consideration of business under General Orders.

PRESIDENT GRAYBILL: The motion is to move the Convention into Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: So ordered.

(Committee of the Whole)

CLERK HANSON: The Style and Drafting Committee Proposal Number Three on legislative article, having been duplicated and placed on the delegates' desks on the 2nd day of March, 1972, at 9:00 o'clock A.M. is now in compliance with Rule Number Twenty-three, Montana Constitutional Convention Rules. March 4, 1972. The following committee proposals are now on General Orders: Revenue and Finance, Bill of Rights,

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Education, Public Health, Local Government, General Government, Style and Drafting Report Number Three, Style and Drafting Report Number Four.

CHAIRMAN GRAYBILL: Very well. Yesterday, we were considering in Committee of the Whole section six of Revenue and Finance Committee proposal. You will recall that we had tentatively adopted section six, and that I had taken the floor to propose an alternative to be added to the ballot. At this time, I would like to withdraw my proposal -- that is, alternative -- to be put on the ballot. I so withdraw. The committee met with me this morning, and we feel that this is not necessary at this time. I agree with that, and we're going to withdraw that proposal. Therefore, we're back on section six. Mrs. Babcock, I see you have an amendment.

DELEGATE BABCOCK: Mr. Chairman.

CHAIRMAN GRAYBILL: Would you like the clerk to read your amendment?

DELEGATE BABCOCK: Please.

CLERK HANSON: (Reading) Mr. Chairman. I move to delete section six of the Revenue and Finance Committee proposal and to place on the ballot the following: Section six: Revenue derived from fees relating to registration, operation or use of vehicles on public highways, or from excise or license taxation on fuels and other energy sources used for propulsion of such vehicles, shall be used solely for the pay-

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ment of obligations incurred for the development, construction, reconstruction, repair, operation, maintenance of public highways, streets, roads and bridges for county, city and town obligations on streets, roads and bridges, drivers' education, enforcement of highway safety, tourist promotion and for statutory refunds and adjustments, administration and collection costs as authorized by the legislative assembly. Signed, Babcock.

DELEGATE BABCOCK: Mr. Chairman. I would like to have you change the first sentence there. I should have written, I move to add as an alternative to section six, and to place on the ballot the following. It has a wrong beginning there. Now, if I may speak to the motion, Mr. President.

CHAIRMAN GRAYBILL: All right. Let me get it straight here. You move to add as an alternative on the ballot, huh?

DELEGATE BABCOCK: Yes.

CHAIRMAN GRAYBILL: All right. Mrs. Babcock's motion is to add as an alternative on the ballot the language she proposes here. Mrs. Babcock, may I inquire? I haven't proofread it. Is this one (B)?

DELEGATE BABCOCK: Yes, very similar. May I speak to the motion?

CHAIRMAN GRAYBILL: Yes, you may.

DELEGATE BABCOCK: It isn't exactly one (B); it's

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very similar to one (B).

CHAIRMAN GRAYBILL: All right. Maybe you'll explain it to us.

DELEGATE BABCOCK: Mr. President and fellow delegates. Mr. Rygg was certainly correct when he stated yesterday that there are two basic factions within the convention. On the north pole, we have those who believe no funds should be earmarked, because it creates a self-perpetuating and unresponsive bureaucracy. Further, as was stated by Mr. Toole, these delegates believe today's voters have a different attitude toward earmarking highway funds, and in fact, he and other delegates were elected on that basis. On the south pole, we have those who believe highway funds should be earmarked for highway construction and maintenance. These delegates fear the legislature will raid the highway fund for other general governmental expenditures such as education or welfare. They contend the gas tax and motor vehicle fees are use taxes imposed on the highway user to pay for the building of roads, and that such taxes should not be diverted to general governmental programs. Yesterday, we spent over three hours trying to bridge this gap and to meet the equator. We were not successful. May I therefore propose that we leave the matter entirely up to the voters? Let's remove the committee proposal from the new constitution and submit an anti-diversion section to the voters on a side ballot. Those who contend the

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1 people today do not want earmarked funds will win their case
2 by not having any earmarked funds if the voters reject the
3 side ballot. Those who contend that the majority of the people
4 today want earmarked funds can win their case if the voters
5 approve the side ballot. In either case, the new constitution
6 is not placed in jeopardy. If we leave an anti-diversion sec-
7 tion in the new constitution, we alienate one group or the
8 other, even if the section is modified, as was done by the com-
9 mittee, by giving the legislature the power to divert with a
10 three-fifths vote. We have still alienated a large number of
11 voters. Further, if we adopt the general transportation fund
12 concept of Mr. Graybill's, which of course now he has withdrawn,
13 we would still alienate a large number of voters. Those persons
14 who support anti-diversion do not believe either the committee's
15 proposal nor the general transportation fund adequately pro-
16 tects highway funds from legislative raids or diversion. So,
17 they have no choice but to try to kill our entire constitution,
18 which they do not wish to do. They want a new constitution
19 as much as all the other Montana citizens, and as much as we
20 want a new constitution. If we do not put any anti-diversion
21 section in the new constitution, we have gained the support of
22 the idealists, but still run the risk of losing the entire ball
23 game. Ladies and gentlemen, I firmly believe we cannot jeopar-
24 dize all of our efforts in the new constitution over this one
25 issue. If we would be foolish and senseless, let's protect

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our new constitution by moving this entire controversial issue to a side ballot, and let the people decide the matter. The anti-diversion I have proposed to be placed on a side ballot is the same as the present one (B) section with some minor changes. I have added county roads and city streets to assure that these funds can be spent locally if needed. As dictated by your vote yesterday, I have also added drivers' education and the highway patrol. You will note my proposal retains the present language of statutory refunds and adjustments so as to assure the farmers and ranchers that they will continue to receive funds for nonhighway use of fuel. I left fines and forfeitures out so cities can continue to receive these funds as in the past. Finally, I used the modern and positive language like that used in the committee's proposal. Basically, as stated, my proposed section is the same as that which we now have with these minor changes, which we hope will be acceptable to everyone concerned. If the people vote for this proposal, then those -- If the people vote this proposal down, then those who advocate complete legislative control of all funds will have been right. On the other hand, if the people approve this proposal, then those who have advocated earmarking highway funds will have been right. In either event, our new constitution will not have been lost, which most certainly is our first priority. We cannot jeopardize the new constitution to satisfy a few special interests. Whether they be highway users

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or idealists, it would be an insult to the people of Montana. I certainly urge your support.

DELEGATE RYGG: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I hate to resist a motion made by Mrs. Babcock, but I think maybe I'm going to have to do that. I would first like to ask Delegate Babcock a question.

DELEGATE BABCOCK: I probably won't know the answer.

DELEGATE RYGG: Oh yes.

DELEGATE BABCOCK: I'd rather bake a cake.

DELEGATE RYGG: All I was wondering -- I didn't quite understand. Was this going on the ballot as an alternate proposal? It would just be the one vote, yes or no?

DELEGATE BABCOCK: As an alternate proposal on the side ballot.

DELEGATE RYGG: You mean along with this section six that the committee had proposed?

DELEGATE BABCOCK: If you think that's advisable, yes.

DELEGATE RYGG: Thank you.

DELEGATE BABCOCK: I originally wanted to delete your whole section, but if this would get the job done, I'll compromise.

DELEGATE RYGG: Thank you. Mr. Chairman, I think it's only fair that I tell you that our committee did meet this

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morning and I think we had thought a lot during the night. We felt that because we have been charged to write a constitution the best way we can, and to really not allow too many outside influences to change our thinking one way or the other, it is the unanimous feeling of this committee that we try to pass section six, as proposed to you yesterday, with one more amendment which we might need. We did probably have to put in statutory refunds. Our thinking had been that public highways would take care of it. Aside from that, we feel that we should just write the constitution that way. That is, the committee feels that this is the thing to do. This is the best way to go. We can't believe that there is anyone who will vote us down because of it. We realize we could be wrong, but it's difficult for us to believe. I have seen letters from farmers here and there throughout the state. I've seen others. I have been given many threats that have said, well, if you do that, we're going to defeat the constitution. Many of those that have said that, I'm sure don't have the power to do it. Maybe this particular group does. But, it is the recommendation of the committee that we try to do the best we can. We feel that right now this section six is what it is, so I suppose I would have to resist the amendment by Mrs. Babcock. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, will Mrs. Babcock

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yield to a question?

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Yes, sir, Mr. Toole.

DELEGATE TOOLE: I'm still not clear on this, Mrs. Babcock. In your amendment, you say you want to delete section six altogether, is that correct?

DELEGATE BABCOCK: No. That's my first preference. When I came here, I thought Mr. Graybill still had his motion on the floor. I think if we can offer this as an alternate or if we can substitute it for the majority proposal, it will be fine with me.

DELEGATE TOOL: In other words, you would leave section six in. Then you would have old section one (B) as amended, as an alternative proposal?

DELEGATE BABCOCK: As an alternate, yes, on the ballot.

DELEGATE TOOLE: Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Toole, to clear that up, when Mrs. Babcock offered the amendment, she asked to change that first line after, I move. It now reads, I move to add as an alternative on the ballot the following. It has the effect of being an alternative in place of the alternative I withdrew.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I don't like the

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motion, and I didn't like it yesterday but I never got around to saying so, because at this stage of the game, I don't think we're in a position to say what should or what should not go on the ballot, because we don't know what else there might be that should go on the ballot. I don't think the convention should be bound. Everybody who loses anything can say, I make a substitute motion that this go on the ballot, and we're going to have a ballot with alternatives that won't quit. There won't be a ballot in the state of Montana, or a voting machine long enough to contain them all. I think that if it turns out after all the debates are over on all the issues that will come before this convention, then we can make a recommendation to the convention, which will probably come out of Style and Drafting, as to what should be on the ballot. Then, when the convention can look at everything that has a potential for an alternative choice, then it can decide which is more important, Mrs. Babcock's idea, maybe my idea of how I want my judges selected, maybe somebody else's idea that lost by a close vote. I think it's premature now to bind the convention to what shall go on the ballot just because we have a hot issue at the moment. Next week it's going to be something under Bill of Rights that is going to be just as hot. I think it's too early to decide that.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: May I direct a question to Mr.

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Schiltz?

CHAIRMAN GRAYBILL: Mr. Schiltz, will you yield?

DELEGATE SCHILTZ: I yield.

DELEGATE RYGG: I've been thinking about this same thing, Mr. Schiltz, and my problem has been that if we conclude these proposals as we do, section by section, then, in our rules, can we go in and open them up and decide if we want an alternate?

DELEGATE SCHILTZ: I don't know. Well, as I conceive the way this convention will finally operate, we will have approved everything section by section. Then, I think the Style and Drafting Committee will report back to the convention, a ballot that has been adopted and agreed upon within that committee. Then, there's a debate on whether that ballot is the ballot that will go out, or another ballot. The convention can debate to take this item out of the alternative and put that one in, inspite of the Style and Drafting Committee's proposal. But, we'll come out with something concrete.

DELEGATE RYGG: Mr. Chairman, could I direct another question?

CHAIRMAN GRAYBILL: Yes.

DELEGATE RYGG: My thinking was if, today, we just passed section six -- just for instance -- but then, at another time, say ten days from now, we should feel that maybe that was wrong. Maybe there should have been an alternative. Then,

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is the possibility closed as to putting an alternative in at that time?

DELEGATE SCHILTZ: No. I would say not. I would say that Style and Drafting, I think, could say -- We could look at an issue that came out on the floor and say that was a tight enough issue so that perhaps we will suggest that be put in the alternative. Or, as an individual choice, do you want capital punishment, or do you not want capital punishment?

DELEGATE RYGG: Thank you. That answers my question.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move that the alternate proposal proposed by Mrs. Babcock, if it meets with the approval of the committee as to its content, be referred to the Style and Drafting Committee for final report of that committee at a later time in the convention.

CHAIRMAN GRAYBILL: I take it to be your motion to refer Mrs. Babcock's proposed alternative amendment to the Style and Drafting Committee. Is that your -- Mr. Joyce, you may speak.

DELEGATE JOYCE: Well, my thinking on it is this, that this will meet Mr. Schiltz's well-pointed objection. It seems to me that it's too early to make this decision, and under the rules of the convention as they have been drafted with the form of the ballot being assigned to the Style Commit-

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tee, that if this convention does believe that this issue was of sufficient importance that it should be, at a later time, considered for submission as an alternate, that if we approved it at this time as to its content, and then before taking any final action thereon, we referred it to the Style and Drafting Committee, they could then report out later in the convention that they propose a ballot containing this alternative along with section six that the Committee of the Whole has already adopted. If, at that time, they decline to put it on the ballot, then the issue can be debated again when the Style and Drafting report to the Committee of the Whole on the ballot comes before the Committee of the Whole of this convention.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman. I would rise to oppose both Mr. Joyce's amendment and Mrs. Babcock's motion for this reason. This convention can do anything they want to do. Right now, under the rules under which we are operating, nothing is included as to bringing later considerations up. Mr. Schiltz's point is very well taken. At some point down the road, this body is going to want to look at what is probably going to be the final product. At that time, it appears to me, it would be the time for us to say, here are the four alternatives that we would like to put on the ballot, or here are the three, or here are the two, or maybe the one. But, to make decisions now that will lock us into something down the

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road, doesn't look wise. We should consider what the impact is going to be after we have a look at the final product. I believe, Mr. Chairman, I'm correct in assuming that this body drew the rules under which we're now proceeding. I'm confident that if it looks like it's the will of the majority, that we can suspend the rules and just do whatever we want to at a later time. Is that true, Mr. Murray, or not? I'd ask you to yield to a question.

DELEGATE MURRAY: I'll yield.

DELEGATE DRUM: Is it true that we could suspend the rules and consider some of these alternatives that may go on the ballot at a later time?

DELEGATE MURRAY: I think that we could suspend the rules and consider some of these alternatives. I also feel that it is within the province of our rules to do what Mr. Joyce has moved that we do, to put this matter as a substantive matter relating to the matter of the ballot into Style and Drafting so that they can accept or reject at some future date, after they have looked at the document in its entirety. So, I think we could do either one. Now, perhaps a little explanation. I've been asked many times, who has the province of determining the question of what shall be contained in the ballot? Our rules, without specifically stating so, provide that the Committee on Style and Drafting, once it has completed its primary work on the matter of style, then becomes a sub-

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stantive committee for the purpose of giving substantive consideration to the question of the ballot, to the form of the ballot under our Enabling Act. So, I feel they have within their province, these questions and they will bring this ballot back to us. We will debate it fully in the Committee of the Whole, just like we're debating this matter now, and decide what that ballot will be. So, really the answer to your question is, it can be done both ways, or either way, by suspending the rules or by taking the action that Mr. Joyce has recommended. We will face the question at the same time and in the same manner.

DELEGATE DRUM: Mr. Chairman. I would like to make one more comment, not in defense of the original section six necessarily, but a point of clarification. Within the section as was printed yesterday, and was voted on by a majority of this body, there is an alternative. The alternative is in the three-fifths. If everything goes the way that Mrs. Babcock's many friends says it should go, and if the highway department operates in a satisfactory manner to the legislature, the anti-diversion of funds will never be a problem. However, if the highway department does not respond to the will of the people, and the will of the legislature, at that point the three-fifths will probably become a factor. It appears to me that we have an alternative written into the same paragraph at the present time. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman. I rise in support of the motion of Mr. Joyce. I think we should let the Committee on Style and Drafting know that we want to preserve our right on this matter. Now, there's another possibility that no one has talked about, and I think it may be a real possibility. If we keep messing around with this sales tax that's on gasoline and other motor fuel, the taxpayers who pay this, may rise up and say, there's enough of this nonsense; let's just repeal the tax on motor fuel. That'll end the whole problem, and I'm not so sure that might not be such a bad idea. We're taking money that was raised for a specific purpose, and now we're saying that didn't mean anything. Sure, we pulled a fraud on the taxpayers, and now it doesn't matter. Times have changed; morals have changed; our word doesn't mean anything; the vote of the people doesn't mean anything, and I think we better give this matter some consideration. I rise in support of the motion of Delegate Joyce that the Babcock amendment be referred to the Committee on Style and Drafting, with the recommendation that it be brought back as an alternate measure on the ballot. Thank you.

CHAIRMAN GRAYBILL: Mr. Aronow. That is not the sense of his motion. There's no recommendation involved at all. It's to refer the thing to Style and Drafting. That's the motion. If you want to amend the motion, you may.

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DELEGATE ARONOW: Will Mr. Joyce yield please?

DELEGATE JOYCE: I will.

DELEGATE ARONOW: What is your motion, Mr. Joyce?

DELEGATE JOYCE: My motion was that, as the president stated, that this matter be referred to the Committee on Style and Drafting for consideration to be reported back by the Style and Drafting Committee to the Committee of the Whole. My motion does not carry any recommendation to that committee, one way or the other.

DELEGATE ARONOW: Thank you.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman. I am a little bit afraid that the convention may be getting lulled into a falso sense of security on this business of referring things to be put on the ballot. Mr. Gysler had a constituent here a few days ago, who posed a question that none of us could answer. It was simply this. Will there be two times to vote on the constitution, or just one? He said, if there are all these alternatives, how do I know how it's going to come out? I might want the constitution with one set of these combinations, but I might not want it with another. How do I get to decide? If most of the people vote, say for a unicameral, I might accept the constitution if it didn't have uni, but I might want to vote against it if it did have uni. How will I ever know what I'm really going to vote on? I've been puzzling

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about this for the last week, and I simply do not have an answer yet. I just want to warn all hands that we do not have a sort of happy haven of refuge of putting a great combination of alternatives on the ballot. The net result of it is going to be that people will say, gee, I don't know what I'm getting, so better I not vote for any of it, and it'll ding the whole thing.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, fellow delegates. I rise in opposition to Mr. Joyce's motion. I have a concern that I picked up in the last four minutes, and I certainly hope that other delegates here have the same concern. I'll try and state it. I understood, or felt I understood, that it was the function of this group to decide what was going on the ballot, and that it was the function of Style and Drafting to suggest to us how it would best go on the ballot. If I'm wrong in that, I'd certainly like to have it explained to me and to the rest of the group.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Furlong is wrong on that. As I view it, the Style and Drafting Committee will report, as Mr. Murray said a few minutes ago, a recommended ballot. We may be one hundred eighty degrees off of anything that you like or want or had previously thought. That will come to Committee of the Whole, and then you move to delete, or you move to strike, or you move as a substitute motion that instead of this,

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that go in, and that stay out. It'll be a first class debate, I'll guarantee you, but that's as I conceive the form.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: May I ask Mr. Schiltz to yield to a question?

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Yes.

DELEGATE FURLONG: Mr. Schiltz, my concern is that if I understand what you're saying correctly, you can, in fact, substantively change the decision of this body by the way you determine to present it. Isn't it the function of this body to determine what will go -- the substantive material that will go on the ballot?

DELEGATE SCHILTZ: Absolutely, after a debate in the Committee of the Whole. I'm not going to decide anything. The convention is going to decide, but we'll make recommendations, and then the fight is on.

CHAIRMAN GRAYBILL: Mr. Driscoll.

DELEGATE DRISCOLL: The crucial motion yesterday, a motion by Foster and Scanlin, to delete section six, page twelve of the majority report, and inserting in lieu thereof, section one (B) of Article Twelve of the present constitution. There were the following votes: seventy-two Nay and seventeen Aye. I would like to remind the convention of the action we took yesterday on section six, if you'd review it for the

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benefit of the convention. (Inaudible -- speaker not turned on.) -- the semi-final action which was your term.

CHAIRMAN GRAYBILL: Perhaps you have reference to the fact that the last thing we did was by voice vote to decide that section six was the sense of the convention. We have not finally adopted it to refer to the convention in the Committee of the Whole, but we did pass by voice vote, section six for adoption.

DELEGATE DRISCOLL: Mr. Chairman, is a substitute motion in order?

CHAIRMAN GRAYBILL: Yes.

DELEGATE DRISCOLL: I would move the adoption of section six as proposed by the committee.

CHAIRMAN GRAYBILL: Do you mean to imply by that, that when this committee does arise and report after having under consideration section six, that it recommend to the convention that this section be adopted?

DELEGATE DRISCOLL: That is my intention.

CHAIRMAN GRAYBILL: Very well. That substitute motion by Mr. Driscoll will be debated.

Mr. McDonough.

DELEGATE McDONOUGH: Mr. Chairman, I'd like to ask Mr. Driscoll a question.

CHAIRMAN GRAYBILL: Mr. Driscoll.

DELEGATE DRISCOLL: Yes, Mr. McDonough.

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DELEGATE McDONOUGH: Mr. Driscoll, would you consider in your substitute motion, amending it so that we add to section six, on line ten of page twelve, after the word, for, statutory refunds and adjustments?

DELEGATE DRISCOLL: Yes, Mr. Chairman, I would accept that.

CHAIRMAN GRAYBILL: Well, you gentlemen put the Chair in aspot here. I realize you want to amend section six. I think maybe what you better do is withdraw your motion to adopt section six, and let's vote on these other two matters. Then, we'll still have a motion to adopt section six.

DELEGATE DRISCOLL: I will withdraw it.

CHAIRMAN GRAYBILL: Very well. The issue then is on Mr. Joyce's motion to refer Mrs. Babcock's motion for a separate alternative to Style and Drafting.

Mr. Monroe.

DELEGATE MONROE: Mr. President. I rise to oppose both of these motions of Mr. Joyce and Mrs. Babcock. I concur with Mr. Drum. We worked hard and long yesterday to reach an opinion. I think it was a strong majority. I don't think we should have an alternative on the ballot. Let's support the majority report if we get to it. We can confirm it then.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: If Mr. Joyce's motion does not

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mean that this convention is approving the Babcock amendment, and asking the Style and Drafting to present both of them to us, then I take it that the substance of the motion is that the Style and Drafting Committee is left with the substantive decision as not to do it. In other words, if Style and Drafting decides not to present this amendment, then they simply won't bring it up. In effect, the Style and Drafting Committee will have made the decision that, I think, maybe this body ought to make.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. Just to make that clear, which apparently neither Mr. Murray nor I did. If the Style and Drafting Committee, after sufficient deliberation, decided that that should not be on the ballot, that there was something more important and we couldn't put everything on the ballot, that report will be debated in Committee of the Whole, and you or anybody else can say, I move to take something else off and put this on. Or, I move to put this on in addition to what the Style and Drafting Committee has put on. We don't make the ultimate substantive decision.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Will Mr. Schiltz yield to another question?

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Yes.

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DELEGATE HARPER: Isn't that the case now though, even if we do nothing on this amendment of Mr. Joyce? Isn't that the case anyway?

DELEGATE SCHILTZ: I think it is.

DELEGATE HARPER: Mr. Chairman, may I ask him one more question?

CHAIRMAN GRAYBILL: Yes.

DELEGATE HARPER: Then, in effect Mr. Schiltz, the motion of Mr. Joyce doesn't give you any prerogative you don't already have?

DELEGATE SCHILTZ: That's the way I feel.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: It seems to me -- maybe I'm a little confused; it's early in the morning -- that what we are doing here is debating Mr. Joyce's motion, as I understand it, without having debated the merits of Mrs. Babcock's. Now, shouldn't we perhaps debate Mrs. Babcock's motion, and if it fails, then we don't have to go along with what Mr. Joyce has suggested. If we go along and debate Mr. Joyce's suggestion, then we haven't even talked about her motion.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President. I think, really, we debated Mrs. Babcock's motion all day yesterday. As I view it, Mr. Joyce's motion merely leaves this option open. If when we get to the end of the road of our convention, and we

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see how voluminous this document is, and how many other things they may want or may not want to put on it, then your option is still open if you think this is a critical measure. It doesn't change anyone's mind. They can kill it then as well as today, or they can put it in, but it leaves that option open until the time when you see how big a constitution and how many other items that are going to be referred to the ballot. It leaves it open so you don't put the first item that comes along on the ballot, and then that makes it so long that you force off any other items when you get down the road, like gambling, capital punishment. You might think one of these might be a good thing on the ballot, and I think it might. It might bring a lot of voters out if you put capital punishment on your ballot. But, if you start putting them on as you go down, and say, this goes on, this doesn't go on, then you get to the bottom and we've got too many on there. There might be some better ones down the road, so. We've got one on now that we've all agreed on, unicameral-bicameral, and I think we should stick with that. But, I think we should defer any other options until we get to the end of the road, and then bring them back in and check and see whether you want them or not. This isn't going to change anyone's mind on this diversion or anti-diversion in this body, but it's to say, should we present this to the voters to give them a choice? I don't think the choice to the voters is particularly good in

one of these real substantive measures. If they really are that upset about it, they'll vote against the whole constitution, but in case the rest of the people vote it in, then they'll take the option. But, there's some other things to other people that won't be that important. So, it seems to me that we're at a real good point now to clarify our position. This is only the second thing that has come up about whether we want it on the ballot. If we put this on, it may force something else off because we've got something already on. So, it seems like we should delay any decision on what other items we put on the ballot until we get through each article. Then, bring them back here and say, now, there's a certain number of people that want this on the ballot, a certain number that -- let's decide first how many issues we can put on it, what'll do the best good for the whole document, as a whole, both substantive-wise and a certain amount, attraction-wise. As I say, the death penalty could bring out a lot of voters that aren't going to vote against the constitution, but might think they want to vote for or against the death penalty, or the lottery issue or something like that. So, I support Mr. Joyce's motion. It's not only well taken in anti-diversion, but when you get to some of these other issues, the fact that the scheduling of your arguments puts one thing before the other, automatically could force off an option later on. I think if we preserve the right to debate what goes on the ballot of a

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substantive nature, until we get all through and see how many there really are left aside. Now, we could decide by vote on Mr. Joyce's motion. It's not approving or disapproving putting this on the ballot, but just preserves the right to bring it up after you look at your whole document and see how long we've got this document, how many other problems we're presenting, how many other things that say, in your committee, there was some substantive issue that there was an option on. I can't visualize any in that perfect document on education that we've prepared, but there might be something that someone would say, let's put that on the ballot. Well, they'd say, no, we've already got all the things we want on the ballot. I think you should defer all the options to the end of the thing and then look at each of them objectively and see whether we want two, three or four and see which ones you want, and which ones you don't want. I don't think this speaks for or against the merits of Mrs. Babcock's motion, because we may have other issues that are just as crucial to the passage of the constitution that we haven't looked at, as this particular thing. So, defer it to the end and then bring it back up and see what's this going to do to our constitution. I certainly support the motion, not only as far as this is concerned, just as a matter of anything else that will come up until we find out what you do want on the ballot.

CHAIRMAN GRAYBILL: Mr. Martin.

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DELEGATE MARTIN: Just a point of information. Does that mean that we can reopen anything that we've already adopted and redebate it?

CHAIRMAN GRAYBILL: Mr. Studer, you were up.

DELEGATE STUDER: Mr. President. I really have the same question Mr. Martin had. I'd like to ask Mr. Davis.

DELEGATE DAVIS: (Inaudible -- speaker not turned on.) -- the will of this convention. We've gone through and we're now on our seventh article. There's only one item we've said should go on the ballot, and that has been very affirmative. We agreed to that already. But, I don't think there's anything else that goes on the ballot, up to today, and anything that anybody wants on afterward, should be deferred to the end and then we can weigh the respective merits. In other words, what if someone in the next article wants something; then, in the last article, there's something real important but we've already got the ballot watered down with so many issues to the voters, that we know it wouldn't be acceptable. I don't think we can go back past today and bring anything up. We've got this far.

DELEGATE STUDER: Mr. President.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Will Mr. Davis yield to another question?

DELEGATE DAVIS: Yes, sir.

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DELEGATE STUDER: If we pass this revenue measure as a whole, and adopt it, how are we going to get Mrs. Babcock's proposal back in here if we don't vote on it now?

DELEGATE DAVIS: I think we have to adopt section six, and then we will decide, if Mr. Joyce's motion sets this aside, to defer consideration of whether this should be on the ballot as a secondary option. Now, we haven't done that with anything so far except bicameral-unicameral, but there may be other things down the road is my only argument. Your right to work, for instance. You're going to say, let's put that on the ballot. Then we'll take the death penalty and whatever else and we'll say, how many of these, if any, do we want on the ballot and then everybody votes on the whole thing at the end.

DELEGATE STUDER: Mr. President, can I ask another question?

CHAIRMAN GRAYBILL: Yes.

DELEGATE STUDER: How am I assured that I can put that on? Our rules say that when we pass this section and finally adopt it, it's finally adopted. Style and Drafting doesn't have veto power over Mrs. Babcock's proposal, does it?

DELEGATE DAVIS: Absolutely not, but when you get to your issue, if you make the motion that you defer this with the right to put it on the ballot, if your motion prevails, then it would be weighed. If Mr. Joyce's motion doesn't

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prevail, then we'll kick it in or out today, as to whether or not it should go on the ballot. I think you can bring something back up by suspending the rules, I suppose, at any time. But, at this point, there's only this one issue.

DELEGATE STUDER: Could I ask another question to clear this up, Mr. President?

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: You say we can suspend the rules, but that takes a vote to suspend the rules, doesn't it?

DELEGATE DAVIS: Absolutely.

DELEGATE STUDER: And, you have to have a majority vote to suspend it. So, if they don't suspend the rules, we have this alternative that Mrs. Babcock wants on here, without having voted on it at all.

DELEGATE DAVIS: The sense of Mr. Joyce's motion is to send this to Style and Drafting and delay taking action on it today, as to whether it would go on the ballot or not. Then, when it comes back up, we would vote. My thought would be, we would vote on it whether it goes on the ballot together with any additional things as we progress through these next two weeks of debate, whether they go on the ballot.

DELEGATE STUDER: Mr. President.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: I believe that Mrs. Babcock's proposal is the answer to the problem. People do get a choice

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in a clear-cut way with her alternative. Yesterday, we had your alternative on the floor. It was going to be an alternative, but it has since been withdrawn. Time shouldn't really preclude this from being considered. Style and Drafting does not have the veto power, I don't believe, to drop an alternative. I'd go for Joyce's proposal to commit to Style and Drafting the Babcock alternative for form only.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: To get back to my confusion, how can we vote on Mr. Joyce's suggestion to put something that Mrs. Babcock has brought up, to Style and Drafting, when we don't even have the other alternative voted on yet? It seems to me that Mr. Joyce should withdraw his motion at this point, and that if we're going to get six in there, we vote on six. Then we decide on whether we're going to have Mrs. Babcock's as an alternative and then we can send it to Style and Drafting.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman, may I ask you a question?

CHAIRMAN GRAYBILL: Yes.

DELEGATE BUGBEE: I think that part of the confusion is that when we talk about alternatives, at least in my mind, that we don't know whether these are going to be two alternatives off on the side -- say, unicameral and bicameral --

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or whether we're going to vote on unicameral and bicameral in this body, and decide to put the majority vote into the body, and then the other off on the side. This is my confusion. Is it going to go off as two alternatives, or is the majority vote going to get it into the body of the constitution with one alternative. Could you clarify that?

CHAIRMAN GRAYBILL: I'll try, Mrs. Bugbee. Let's forget about the issue of this particular matter being referred, because this matter has come up several times. We all know that bicameral-unicameral has been referred in dual nature to the Style and Drafting Committee. Now, the Style Committee becomes a substantive committee for purposes of proposing a ballot. It will propose a ballot form to us as it sees fit, after having gotten the unicameral-bicameral thing presented to it. Then, it will make that recommendation and then we will debate that recommendation. That's the sense of what Mr. Schiltz has been saying. There are, however, a lot of different ways that things can go on the ballot. The A, B, alternative is one way, putting something into the constitution with an alternative to the side that would take it out, is another way, putting something in the constitution with a yes-no on that issue only, is a third way. There are a lot of different ways, and we do not have to use the same way on all issues. Some issues lend themselves to different methods of putting them on the ballot. The point is, that all this body

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has to do is to decide if it wants something on the ballot. When it does, this body can then give it to Style and Drafting, who will put it in a form. If we don't agree with the form, we may amend it and debate it on the floor. The thing that Style and Drafting wants to know is, are we suggesting to them that it be on the ballot, or are we not? Part of the problem here, I think, is that on the motion before us at the moment, is that we're not sure that we're telling them to do it, or we're not telling them to do it. Maybe that's fine too. I'm not going to try to change your motions. I don't know if I've answered your question, but the point is that Style and Drafting is a substantive committee for the purposes of suggesting a ballot. If Style and Drafting wanted to, it could make everything in the constitution an alternative on the ballot, and we would go down through and, I suppose, vote them down. But, in other words, they have an absolute right to suggest the ballot form.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. My efforts to resolve this matter procedurally and to satisfy Mr. Schiltz about not making the decision prematurely, I see have been in vain. I withdraw my motion.

CHAIRMAN GRAYBILL: Very well. Mr. Joyce's motion is withdrawn. We're now debating Mrs. Babcock's motion that an alternative section six be added on the ballot.

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Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I rise, too, for information. It was my impression that we did pass number six as proposed by the committee yesterday. Now, am I wrong on that?

CHAIRMAN GRAYBILL: We, by voice vote, made it the sense of the convention. We did not make the motion that moves it on into the convention when this body does arise and report. So, it's still open for amendment. We didn't finalize it, let's put it that way.

DELEGATE ECK: Thank you.

CHAIRMAN GRAYBILL: Mr. James, you've been up several times.

DELEGATE JAMES: Thank you, Mr. Chairman. I've been thinking about this all evening, and in reading Article Four of the old constitution, and the First Article in the General Government's section of our proposed constitution, I see that the powers of the government of this state are divided into three distinct departments, legislative, executive and judicial. It says nothing about highway department. Now, the thing that bothers me here is we elect these state officers as a check on the governor. We feel the governor's powers shouldn't be too extensive, so we've retained all these elective offices to act as a check. In the judicial article, we're having our judges return for confirmation by the electorate.

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Again, with the governor, we've given the legislature new power to override his veto. With the legislature, of course, there's the government veto. All these powers have a check on them. Now, if we adopt other proposals, rather than the committee proposal, -- I would like to ask a question of Mrs. Babcock. What power do we have over the highway department if we remove the legislative veto you might say? Mrs. Babcock, will you answer that one?

DELEGATE BABCOCK: I'm sorry, I can't answer that.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President. I think this whole issue comes down to one thing. From the majority committee report, which I support -- is to whether the highway department of the state of Montana will be answerable in these legislative halls to our committee. Now, I've heard through the years -- I've talked to people who have served up here in the state legislature and have come back home, and they've been extremely bitter. They say they have gone over to the highway department, they have tried to get information, they have been treated with arrogance, they have been told, in effect, that it's none of their business. If I might recall just one incident to your mind. I remember some three or four years ago, that there was finally a Conference Committee put together, of senators and representatives of the highway committees to go over and talk to the people in the highway

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department. I believe, as I remember, Elmer Schye was the chairman of that committee. They got over there and it was reported in the newspapers that the people, the highway engineers, said to that committee, we don't have to answer to you. Elmer Schye, God bless him, pounded the table and said, you will answer. But, there is nothing under this section one (B) that seems to me to make the highway department answerable to the people of the state of Montana that serve in these halls. I think that the majority committee -- After all, if you look at these people that are on this committee, they're certainly not wild-eyed radicals. They're pretty conservative people. They thought about this. They listened to all the testimony. I think they came up with a good committee report. I can't see why we should go back to the old section when these people have looked it over; they feel that this will serve the people of Montana well; they have written in what I think is a fair safeguard, this three-fifths, before they can get any money out of here for these other purposes, and I believe that it's a sound committee report. I support it, and I believe that we should support the majority committee all the way on this.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President. I submit to this convention that the powers of the legislature are sufficient, that they can do anything that they want to with the highway department, if there's enough people in the legislative session

that decide to do this. It takes a majority of the legislature to do it, and they can do. They have that authority. The legislative assembly of the state of Montana has the power to do anything they want to if the majority so votes. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Will Mr. Wilson yield to a question?

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Yes, sir.

DELEGATE TOOLE: Can you tell me how the legislature can take thirty-eight million dollars away from the highway department?

DELEGATE WILSON: Take thirty-eight million dollars away from them?

DELEGATE TOOLE: Under section one (B)?

DELEGATE WILSON: The legislature has the authority to tell the highway department what they can do.

DELEGATE TOOLE: I beg your pardon. They do not, sir. They cannot do anything with that thirty-eight million dollars that is force-fed into the highway department. The legislature has no control over that thirty-eight million dollars, nor do the people of the state of Montana.

CHAIRMAN GRAYBILL: Thank you, Mr. Wilson and Mr. Toole.

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Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. If Delegate Wilson is correct, and I hope he is, then there should be no objection by anyone to the majority report.

CHAIRMAN GRAYBILL: Mr. Champoux, do you feel better now?

DELEGATE CHAMPOUX: Not yet, no sir. I'm not arguing either point here. I didn't stand up yesterday at all. I'm not arguing either position. However, is it my understanding -- At this point, I feel this, and I'm directing this question to you, Mr. President. Is it my understanding that we are now voting on whether we're going to put this on the ballot or are we debating the merits of Mrs. Babcock's motion?

CHAIRMAN GRAYBILL: Mrs. Babcock's motion is, I move to add as an alternative on the ballot, the following section six. Then she has the modified one (B) language.

DELEGATE CHAMPOUX: Then, is it your understanding that we are, at this point, not only debating the merits of Mrs. Babcock's proposal, but also whether it goes on the ballot as an alternative?

CHAIRMAN GRAYBILL: Her motion directs that she wants it added as an alternative on the ballot. That's right.

Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. The idea of the Anti-diversion Amendment is well sold to the people, and was

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placed in the present constitution by the people. To me, a vote of the people is safer and should be respected. If the people want to change their minds, let's give them the alternative. Having served in these chambers for three sessions of the legislature, I sincerely feel that three-fifths vote of the legislature is small protection for our highway funds. I've suffered through a special session, and we all know the history of the last two sessions, which were deadlocked because of disagreement over finances. Human nature being what it is, my observation as a member of the legislative body, is that a percentage of the body will move in the line of least resistance. I would predict that if a financial deadlock developes again, the signs point loud and clear to the highway funds, and the pressure to make a raid on the gas taxes will be irresistible. Twenty years from now when we've completed our road work, I would support loosening the highway funds to other uses. I support Betty Babcock's proposal.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman. The people of 1956 changed their minds and sent me up here. I oppose the amendment and I support the majority.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. President. I rise in support of Mrs. Babcock's motion to put section one (B) on the ballot as a substitute. I served in the Montana legislature

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since, I think, 1945. I can remember when we even voted bonds to build roads to get ourselves out of the mud. At that time, the highway department didn't have money enough. Today, they don't have money enough to keep their construction system going like it should be. That's the reason a lot of these people are hollering for roads, and they don't get them. You also should remember that the legislature has established priorities for the use of this money in all of the various areas, the interstate, the primary and the farm to market. The highway department has to live with those. I agree that there have been times when some members of the highway department have been rather rude to delegates that have visited with them, but I have never been to the highway department, on a request for information, that I didn't get a very courteous reply and ample time and explanation of all the things I asked for. Again, I would like to tell you, as I told you yesterday, if proposal number six goes on the ballot and the people have no choice, that within four years time, your highway department construction will be cut in half. I've been in the legislature, and I know how close many times the funds that were railroaded to the highway department, have come to being taken away. I know the temptations that will be before the legislature and so I certainly am agreement with Mr. Etchart's statements and hope you support Mrs. Babcock's motion.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. President and fellow delegates. I would like to speak first to the point that Mr. Etchart raised in regard to the vote of the people sustaining in 1955, the Anti-diversion Amendment. I wish to call your attention to another point. In 1967, the majority of the people overruled allowing six amendments to the constitution on one ballot. In the legislative article, we have overruled that decision. In 1967, the people of Montana voted against allowing eighty legislative days in the constitution, and we have overruled that. Also, in 1961, there were eighty thousand people on a very close vote, that voted that, in fact, they did not want justices of the peace in the constitution. In fact, we have retained the justices of the peace. I submit that the previous history of amendments to the constitution is not our purpose here. We have to decide on the merit of the issue. I suggest that the merits of retaining the Anti-diversion Amendment as it exists now in the constitution is not warranted. In fact, in the Bill of Rights Committee, a representative of the highway department -- a lawyer, Mr. Ron Douglas -- stated that, in fact, he felt that the Anti-diversion Amendment should not be in the constitution. I think that in the course of this debate, we have seen very clearly that the Anti-diversion Amendment does not belong in the constitution, and we see very clearly, that the committee that has worked so hard on this has done an excellent job.

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They presented us an excellent proposition to make the highway department responsive and also to give them a little bit of extra protection. Now, I submit that the highway user and the people that are concerned about our highway money, when we give them ten extra votes in the legislature, they can take all of that good effort, all that good representation they've had here. They can take that same ability to present their case to the legislature, and with those ten extra votes, they certainly ought to be able to take care of the highways. Now, the point that many raise is that we're going to lose our good roads in the rural areas, and we're not going to get our city streets taken care of. I submit that the history of the highway department has been that, in fact, we haven't gotten that in the past, and it seems to me that the proposal of the majority is going to make them more responsive, will use our money better and, in fact, we'll be a lot better off. I resist the motion of Mrs. Babcock. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rollins.

DELEGATE ROLLINS: Mr. President. I'm concerned about three things. One is immediate. That's the peace of mind and well being of Dick Champoux. (Laughter) He's perturbed. We can end that by voting down this amendment. Mr. Etchart has joined the ranks of the prophets predicting, with great certainty, that the legislature will fall prey to the temptations of easy money. I'm not sure he can prove the moral

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qualities of that next legislature. Mr. Barnard becomes a Cassandra and says that if such things happen, dire consequences will occur in the future. I don't know where all of these powers come from. I'm not going to prophesy anything although I think I'm the only Mormon here. (Laughter) I'm here to help write a constitution. I oppose past alternatives and any present alternatives that come. In my opinion, the people should have one choice, the constitution we write, as opposed to the constitution they now have. I urge that you vote down Mrs. Babcock's amendment.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I waited all day yesterday. I waited all this morning for the people that claim that labor elected them here to come to the support of labor. Now, I don't think that labor, per se, elected me. The people in district six elected me. Sometimes I am sure that the people that belong to unions there probably don't think I should be up here, but now I think I'm going to have to come to their rescue. It seems like the many people that have been accused of being elected by labor and sold them out -- I'm not going to accuse them of that, but I just can't understand. Now, here's in the Montana branch of the International Union of Operating Engineers, forty-nine hundred of them, say that if anti-diversion clauses change, the state will lose millions of dollars in federal matching funds.

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Montana does not have the available matching funds. The federal funds for the fiscal year are lost forever. I think Mr. Mahoney touched on this pretty heavily. Many jobs would be lost if they don't have their matching funds, which they can get, if the state has funds. Now, they have forty-nine hundred members apparently. Montana AFL-CIO has many, many more members that that. In their letter to all of the delegates -- I'm sure it did. It was addressed to the president. I'm sure they all got it. -- section six, highway, anti-diversion. This section, in its present form, is not acceptable because it does not provide the adequate safeguards against diversion of highway fuel taxes and other revenues by the legislature. Now, why in the world can't we accept Mrs. Babcock's amendment, put this on the ballot, let these people have an opportunity to vote on it. I don't see why this is not important enough,if unicameralism is important enough,to put on the ballot. It seems to me that, with this many people in the state of Montana that are opposed to this as it comes out of the majority report -- Now, I don't know whether I agree with the majority report, wholeheartedly, or disagree. I don't think I have too much feeling, but I certainly think when this many people take a stand, that we ought to recognize it. It has been said a thousand times here that this is the peoples' convention. Let's recognize the people and let them vote on something where we have a clear-cut chance to do it, and quit this fool-

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ing around trying to lock something in that somebody thinks it ought to have. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Mr. Conover.

DELEGATE CONOVER: Mr. President. I came here. I got elected on the basis that if I could do something with the bureaucracy in our state government. I want to say to you. You're all talking here -- a few of you -- that the highway department is going to run out of money, they're going to take their money. I'm not afraid of the legislature taking the highway's money. I'm afraid of the highway getting into the legislature's pocket. Just remember in the last session. What did the highway department do? They wanted a six million dollar building. Let me clue you here again. If they got that kind of money to build a building, look out for next year. They'll be right back after it again. I'm saying to you, that it's going to come out of your pocket and my pocket. I'm going to put this little plug in just for ourselves. We're sitting with a little back-house back here for agriculture and we're not griping.

CHAIRMAN GRAYBILL: Very well. The issue is on Mrs. Babcock's proposal this morning that we add as an alternative on the ballot language similar to one (B). Does anyone want the language read?

Mr. Kelleher.

DELEGATE KELLEHER: Will Mrs. Babcock yield to a

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question?

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Yes, sir.

DELEGATE KELLEHER: The last few words, as authorized by the legislative assembly, I'd just like to know whether they apply to all three phrases following the verbs, shall be used. You'll note that it's broken down into three parts, expenditures for public highways. Then the second group, for county, city and town obligations and then the third group for statutory refunds. Would the words, as authorized by the legislative assembly, Betty, apply to all three groupings?

DELEGATE BABCOCK: Yes.

DELEGATE KELLEHER: Thank you.

DELEGATE BABCOCK: May I close, Mr. Chairman?

CHAIRMAN GRAYBILL: Mr. Wilson, Mrs. Babcock is going to close. Do you want to speak first?

DELEGATE WILSON: Mr. President. Since I was challenged by Mr. Toole about the effect the legislature might have on the highway department, as such, I believe if you will read very carefully, Mrs. Babcock's suggested amendment, that this is taken care of there. It refers to all of the section that such costs will be authorized by the legislative assembly.

CHAIRMAN GRAYBILL: Mrs. Babcock. Just a moment, Mr. Champoux.

DELEGATE CHAMPOUX: I'm still confused. Now, have

we voted in section six?

CHAIRMAN GRAYBILL: No.

DELEGATE CHAMPOUX: What we're doing here with this vote, then, is voting in an alternative when we don't have an alternative to match it with. Is that correct?

CHAIRMAN GRAYBILL: Are you addressing the Chair?

DELEGATE CHAMPOUX: Yes, sir.

CHAIRMAN GRAYBILL: Well, we have section six's language proposed, and then we have this amendment proposed. This amendment is proposed as an alternative to it, rather than as a substitute for it. Does that help you?

DELEGATE CHAMPOUX: Could it be possible then, that we vote this in and we don't get section six as the alternative?

CHAIRMAN GRAYBILL: I hesitate to say what is possible or not possible here.

DELEGATE CHAMPOUX: I can see that. (Laughter)

CHAIRMAN GRAYBILL: Mr. Champoux, all I know is that if we do what Mrs. Babcock asked, it's to be as an alternative.

DELEGATE CHAMPOUX: To what?

CHAIRMAN GRAYBILL: To whatever else we adopt for section six.

DELEGATE CHAMPOUX: If we adopt section six.

CHAIRMAN GRAYBILL: Right.

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DELEGATE CHAMPOUX: Thank you, sir.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: I'd like to direct a question to Mrs. Babcock.

DELEGATE BABCOCK: Yes, Ma'am.

DELEGATE ECK: In keeping with the idea that highway monies -- monies that we derive from the use of the automobile on our roads -- should be spent for those uses, I wonder if you would be willing to add, say, down after tourist promotion, another phrase, and the alleviation of problems attendant to the use of the automobile.

DELEGATE BABCOCK: In other words, we'll go into the environmental issue, huh?

DELEGATE ECK: Well, those environmental problems attendant to the use of the automobile, which could be used car bodies -- No, we really didn't want to see that written -- It could be cities, it could be air pollution problems.

DELEGATE BABCOCK: I wouldn't be agreeable to writing that in, but I certainly would be agreeable to soliciting the help of the people that are for this amendment to work on the environmental issue, if this passes.

DELEGATE ECK: Thank you. I will not try to amend the motion, Mr. Chairman.

DELEGATE BERTHELSON: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berthelson.

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DELEGATE BERTHELSON: May I address a question to Mr. Schiltz? Would you yield to a question?

DELEGATE SCHILTZ: I yield.

DELEGATE BERTHELSON: Mr. Schiltz, I'm trying to clear up a misunderstanding here as to what the last five words in Betty Babcock's motion refers to, as authorized by the legislative assembly. Mr. Wilson says those words apply to everything said above. I contend they apply only to administrative and collection costs as authorized by the legislative assembly. Would you --

DELEGATE SCHILTZ: Mr. Bertheleson, I would refer you to some member of the committee who has studied this in more depth than I have. I suspect your version is the version.

DELEGATE BERTHELSON: I suspect that I'm right. (Laughter)

CHAIRMAN GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: There was a statement made yesterday, I think, that should be cleared up a little. Mrs. Babcock made the statement that if this majority proposal was accepted, the Farmers Union would vote against the whole constitution. I inquired into that, and I can find no one who has made that statement. There might have been one member, but Farmers Union as a whole, has not made that statement.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President. I would make

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the same remarks that Mr. Siderius made with reference to the AFL-CIO.

CHAIRMAN GRAYBILL: Mr. Simon.

DELEGATE SIMON: Mr. Chairman. What confuses me is what Mr. Champoux is confused about. If we vote on Betty Babcock's motion, that does not necessarily say that I'm voting against. As I understand it, number six could be put on the ballot, and this could also be put on the ballot. In voting for this amendment of Betty Babcock's, it's simply giving the people a choice. It's not necessarily saying that I'm voting against number six. Right, Betty?

CHAIRMAN GRAYBILL: Mrs. Babcock, will you yield?

DELEGATE BABCOCK: Yes.

DELEGATE SIMON: Am I correct that if I vote for your amendment, that I'm not particularly voting for number six, but I am voting for two choices for the people?

DELEGATE BABCOCK: Yes, providing -- I'd like to ask a question now of Mr. Davis.

CHAIRMAN GRAYBILL: Wait a minute, Mrs. Babcock. Your answer is yes, and Mr. Simon has the floor.

DELEGATE SIMON: Well, that was what I was trying to clear up. I think we're really making the choice of putting both on the ballot. I would like to clear up one other point, if I might ask my good friend down here, Dr. Rollins, a question?

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CHAIRMAN GRAYBILL: Mr. Rollins.

DELEGATE ROLLINS: I yield.

DELEGATE SIMON: I'm not quarreling with you; I'm just asking a question. In your statement, you said that you would write a constitution and give it to the people in one chunk at one time. Are you saying that we should pick out unicameral and bicameral and only vote on one?

CHAIRMAN GRAYBILL: Mr. Simon, that's not a relevant question. I'm going to rule it out of order. We're debating a different matter.

DELEGATE SIMON: Thank you, sir.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President. I just wanted to clear up Dr. Rollins -- Dr. Rollins talked a minute ago, about not wanting an alternative on. There are certain things that we do have to have a real controversial issue -- We should have alternatives. If we proceeded on his theory that we don't have one, we're certainly giving a real alternative. We're putting it to the people where the "aginers", and people are inclined to vote against things. If they don't like them, they vote against them. We'll have a lot of controversial issues in here. If there's no alternatives, they'll vote against this proposal as against taking the old one. That's the most risky alternative we have yet.

CHAIRMAN GRAYBILL: Mr. Drum.

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DELEGATE DRUM: I'd like to restate my concern of taking the action of endorsing Mrs. Babcock's proposal. It would then become the alternative. Again, I say, there may be other alternatives. I'm not suggesting it, but maybe another alternative would be to make the last line of section six an alternative, because everything above that is substantially the same as Mrs. Babcock's. This, I believe, should come up as a suggestion from the Style and Drafting people at a later time. Then, the convention can act as a body, and if fifty-one percent of the people here feel that it is a problem at that time, I'm certain we can suspend the rules and go ahead and proceed along those lines.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. President. I am also opposed to earmarking, but as I read the constitution as in our (Inaudible -- speaker difficulty.) -- it says authorized by the state legislature. I believe that I will stick with the majority report. I understand that, in the past, the highway department has been very dictatorial. In giving them this vote, I think it should be three-fourths but that's another thing. I believe that we can put our finger down on the highway department because just stating in Mrs. Babcock's, authorized by the state legislature, I don't think they'll have too much power. Thank you.

CHAIRMAN GRAYBILL: Mrs. Bates.

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DELEGATE BATES: Mr. Chairman, a point of information here. Is this amendment of Mrs. Babcock's open now for more amendments, or are we just discussing the possibility of putting this as an alternative measure or proposal?

CHAIRMAN GRAYBILL: No, everything's open for amendment always.

DELEGATE BATES: Okay, I have an amendment here. I have a copy here. Would you take it up to the Chair please? Mr. Chairman. I move that we add to Mrs. Babcock's proposal, if these funds are no longer needed for the above purposes, then the legislature must reduce the highway users' taxes.

CHAIRMAN GRAYBILL: Mrs. Bates, have you got that reduced to writing?

DELEGATE BATES: Yes, I have. I just passed it up.

CHAIRMAN GRAYBILL: I see. I have it here.

DELEGATE BATES: Mr. Chairman, may I speak on this?

CHAIRMAN GRAYBILL: Just a moment. Mrs. Bates proposes an amendment to Mrs. Babcock's language by adding a sentence at the end. It says, if the above funds are no longer needed for the above purposes, the legislature must reduce the highway users' taxes.

Mrs. Bates.

DELEGATE BATES: In talking to several people that feel very strongly about these taxes and these revenue measures

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that are used for highways, and they feel they must be used for these, and should not be diverted. In order to have good roads, I think we need this money. Rather than divert it to another purpose from which the tax was intended, I feel that this would be a safeguard. It would not be a sales tax, as our gas tax now is, for other purposes. Thank you.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman. I rise in opposition to this amendment. Building highways is a long-range program and you can't, one minute, hire engineers and not have any roads to build, and the next minute, have engineers and do just the opposite. Highways are an important umbilical cord to the other states of this nation. Here in Montana, we have a particular road situation. Montana is no ordinary state. It's six hundred miles across. We have hot and cold weather and that makes a highway building problem. We have a mountanous area. We have to have a long-range building fund for highways. Therefore, I oppose this motion.

CHAIRMAN GRAYBILL: Very well. The issue is on Mrs. Bates' motion to add a sentence to the end of Mrs. Babcock's language. If the above funds are no longer needed for the above purposes, then the legislature must reduce the highway users' tax. So many as shall be in favor of that amendment, say Aye.

DELEGATES: Aye.

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CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it. It's defeated. We're back to discussing Mrs. Babcock's amendment. Mrs. Babcock, are you ready to close?

DELEGATE BABCOCK: Yes, Mr. President. I would just like to remind the delegates that the people that have advocated this are not stray souls that have wandered in from North Dakota. They are citizens of Montana. They want to work for the constitution. They want us to have a good highway program, and they want us to have a good constitution. I would like to also remind you that in voting for this proposal, you can still vote for section six later. I very much urge you to vote for this proposal. Thank you.

CHAIRMAN GRAYBILL: Very well. Mrs. Babcock's motion is to add as an alternative to the language that the committee has come up with for section six, the language that is before you. I don't suppose I need to read it. Do you want a roll call vote?

DELEGATES: Yes.

CHAIRMAN GRAYBILL: So many as shall be in favor, vote Aye on the voting machines. So many as shall be opposed, vote No. Has every delegate voted? Does any delegate wish to change his vote? Please take the vote.

Aasheim - Aye Anderson, J. - Aye

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1	Anderson, O.	- Abs	Cross	- Nay
2	Arbanas	- Abs	Dahood	- Nay
3	Arness	- Nay	Davis	- Aye
4	Aronow	- Aye	Delaney	- Aye
5	Artz	- Nay	Driscoll	- Nay
6	Ask	- Abs	Drum	- Nay
7	Babcock	- Aye	Eck	- Nay
8	Barnard	- Aye	Erdmann	- Aye
9	Bates	- Nay	Eskildsen	- Abs
10	Belcher	- Abs	Etchart	- Aye
11	Berg	- Nay	Felt	- Abs
12	Berthelson	- Nay	Foster	- Nay
13	Blaylock	- Nay	Gurlong	- Nay
14	Blend	- Nay	Garlington	- Aye
15	Bowman	- Abs	Graybill	- Nay
16	Brazier	- Abs	Gysler	- Nay
17	Brown	- Nay	Habedank	- Aye
18	Bugbee	- Aye	Hanson, R. S.	- Aye
19	Burkhardt	- Aye	Hanson, R.	- Aye
20	Cain	- Aye	Harbaugh	- Nay
21	Campbell	- Nay	Harlow	- Nay
22	Cate	- Nay	Harper	- Nay
23	Champoux	- Nay	Harrington	- Nay
24	Choate	- Aye	Heliker	- Nay
25	Conover	- Nay	Holland	- Abs

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Jacobsen	-	Nay	Reichert	-	Nay
James	-	Nay	Robinson	-	Nay
Johnson	-	Aye	Roeder	-	Nay
Joyce	-	Nay	Rollins	-	Nay
Kamhoot	-	Aye	Romney	-	Aye
Kelleher	-	Nay	Rygg	-	Nay
Leuthold	-	Aye	Scanlin	-	Nay
Loendorf	-	Nay	Schiltz	-	Nay
Lorello	-	Nay	Siderius	-	Nay
Mahoney	-	Nay	Simon	-	Aye
Mansfield	-	Nay	Skari	-	Nay
Martin	-	Nay	Sparks	-	Nay
McCarvel	-	Nay	Speer	-	Nay
McDonough	-	Nay	Studer	-	Aye
McKeon	-	Nay	Sullivan	-	Abs
McNeil	-	Nay	Swanberg	-	Aye
Melvin	-	Nay	Toole	-	Nay
Monroe	-	Nay	Van Buskirk	-	Nay
Murray	-	Aye	Vermillion	-	Nay
Noble	-	Aye	Wagner	-	Nay
Nutting	-	Aye	Ward	-	Aye
Payne	-	Nay	Warden	-	Nay
Pemberton	-	Aye	Wilson	-	Aye
Rebal	-	Nay	Woodmansey	-	Nay

CLERK SMITH: Mr. Chairman, thirty voting Aye,

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sixty voting No.

CHAIRMAN GRAYBILL: Sixty having voted No, and thirty Aye, the motion fails.

Mr. McDonough.

DELEGATE McDONOUGH: Mr. Chairman.

CHAIRMAN GRAYBILL: You have an amendment. Do you want the clerk to read it?

DELEGATE McDONOUGH: Yes.

CHAIRMAN GRAYBILL: Will the clerk read the amendment of Mr. McDonough to section six?

CLERK SMITH: (Reading) Mr. Chairman. I move to amend section six on page twelve, line ten, of the Revenue and Finance Committee proposal, after the word, for, by adding the following, statutory refunds and adjustments. Signed, McDonough.

CHAIRMAN GRAYBILL: Very well. If you'll take your books and look at page twelve, on line ten. The sense of Mr. McDonough's amendment is to add on line ten, after the word, for, four words, statutory refunds and adjustments. So, that the phrase reads: After the deduction of funds for statutory refunds and adjustments, enforcement of highway safety, drivers' education, etc.

Mr. McDonough.

DELEGATE McDONOUGH: This will be short, Mr. President. We thought originally by the wording of taxes on fuels

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actually used on the highway, that there would be no questions about refunds and adjustments. The question has arose, and therefore, we want to specifically put in here that the fuels are not used propelling motor vehicles down a highway, they certainly can be refunded and adjusted. This is made on behalf of myself and the committee.

CHAIRMAN GRAYBILL: Very well. Mr. McDonough's amendment has the effect of adding the words, statutory refunds and adjustments, to take care of the situation where fuel tax is on nonhighway use. Is there any discussion? All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: Mr. Rygg, would you care to restate the motion?

DELEGATE RYGG: Mr. Chairman. I move that when this committee does arise and report after having had under consideration section six of Proposal Seven, that it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: Very well. You have before you, Members of the Committee, Mr. Rygg's motion that when this committee does arise and report after having had under consideration section six of the Revenue and Finance Proposal, that this committee recommend the same do pass. So many as

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shall be in favor, say Aye. Wait a minute. Do you want a roll call? Very well. So many as shall be in favor, vote Aye on the voting machines. So many as are opposed, vote No. Have all the delegates voted? Does any delegate wish to change his vote? The clerk will take the ballot.

Aasheim	- Nay	Burkhardt	- Aye
Anderson, J.	- Aye	Cain	- Aye
Anderson, O.	- Aye	Campbell	- Aye
Arbanas	- Abs	Cate	- Aye
Arness	- Aye	Champoux	- Aye
Aronow	- Nay	Choate	- Nay
Artz	- Aye	Conover	- Aye
Ask	- Aye	Cross	- Aye
Babcock	- Nay	Dahood	- Aye
Barnard	- Abs	Davis	- Abs
Bates	- Aye	Delaney	- Aye
Belcher	- Abs	Driscoll	- Aye
Berg	- Aye	Drum	- Aye
Berthelson	- Aye	Eck	- Aye
Blaylock	- Aye	Erdmann	- Nay
Blend	- Aye	Eskildsen	- Abs
Bowman	- Aye	Etchart	- Abs
Brazier	- Abs	Felt	- Abs
Brown	- Aye	Foster	- Aye
Bugbee	- Aye	Furlong	- Aye

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1	Garlington	-	Aye	McDonough	-	Aye
2	Graybill	-	Aye	McKeon	-	Aye
3	Gysler	-	Aye	McNeil	-	Aye
4	Habedank	-	Aye	Melvin	-	Aye
5	Hanson, R. S.	-	Aye	Monroe	-	Aye
6	Hanson, R.	-	Aye	Murray	-	Aye
7	Harbaugh	-	Aye	Noble	-	Aye
8	Harlow	-	Aye	Nutting	-	Nay
9	Harper	-	Aye	Payne	-	Aye
10	Harrington	-	Aye	Pemberton	-	Aye
11	Heliker	-	Aye	Rebal	-	Aye
12	Holland	-	Abs	Reichert	-	Aye
13	Jacobsen	-	Aye	Robinson	-	Aye
14	James	-	Aye	Roeder	-	Aye
15	Johnson	-	Nay	Rollins	-	Aye
16	Joyce	-	Aye	Romney	-	Aye
17	Kamhoot	-	Nay	Rygg	-	Aye
18	Kelleher	-	Aye	Scanlin	-	Abs
19	Leuthold	-	Aye	Schiltz	-	Aye
20	Loendorf	-	Aye	Siderius	-	Aye
21	Lorello	-	Aye	Simon	-	Nay
22	Mahoney	-	Nay	Skari	-	Aye
23	Mansfield	-	Nay	Sparks	-	Aye
24	Martin	-	Aye	Speer	-	Aye
25	McCarvel	-	Aye	Studer	-	Nay

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Sullivan	- Aye	Wagner	- Aye
Swanberg	- Nay	Ward	- Aye
Toole	- Aye	Warden	- Aye
Van Buskirk	- Aye	Wilson	- Nay
Vermillion	- Aye	Woodmansey	- Aye

CLERK SMITH: Mr. Chairman, seventy-six voting Aye, fourteen voting No.

CHAIRMAN GRAYBILL: Seventy-six having voted Aye, and fourteen having voted No, section six as amended of the committee proposal is adopted. Will the clerk please read section seven in its entirety? Mrs. Van Buskirk, for what purpose do you rise?

DELEGATE VAN BUSKIRK: Mr. Chairman. I'd like to express my feelings that I feel real proud of this group. We are representing Montana.

CHAIRMAN GRAYBILL: Very well. All right, now the clerk will read section seven.

Mr. Rygg.

DELEGATE RYGG: I wonder if it would speed up anything. I'm going to move to amend section seven by deleting it in its entirety and to supply the material that is on your desks. I don't know if he still must read it or not, but I do plan to amend it by deleting it in its entirety, and substituting the short amendment, which should be on your desks.

CHAIRMAN GRAYBILL: Mr. Rygg, the Chair and the

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clerk did not receive your material, or at least, the Chair didn't. May I have your attention? The Chair will ask if there's any objection if we do not read section seven of the committee report, and allow the amendment without reading that page and a half of material. Is there anyone who objects? Very well. Hearing no objection, Mr. Rygg, may the Chair direct the clerk to read your amendment to section seven?

DELEGATE RYGG: Do, sir.

CHAIRMAN GRAYBILL: Very well. Please read the amendment.

CLERK SMITH: (Reading) Mr. Chairman. I move to amend section seven of the Revenue and Finance Committee Majority Report, starting on line seventeen of page twelve, through and including line three on page fourteen, by deleting the material contained therein and inserting in lieu thereof the following new material: Section seven, Tax Appeals: The legislature shall provide taxpayer independent appeal procedures for appraisals, assessments and equalization grievances and tax grievances. The legislature shall include therein a review of the procedure at the county or local governmental unit level. Signed, Rygg.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I suppose all you committees probably had the same trouble we did in meeting our deadline. About 11:00 o'clock one night, we were still wrestling with this

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section. We did have quite an involved section. At the time, there were some of us on the committee who felt that perhaps this was too involved, and really too much of a legislative article to be contained in the constitution. However, because of the lateness of the hour and the nearness of the deadline, we did feel that we had to submit it. Since then, we have met on several occasions and discussed this particular section. We are not changing our concept at all, because we think that this concept of establishing independent tax review is something that is needed. Under the present tax administration program, the same governmental bodies -- that is, the county boards of equalization and the state board of equalization -- that establish the revenue policies and procedures, then also sit in judgment when a person wants to appeal the implementation of these policies and procedures. The testimony heard during the past few weeks indicates that this procedure does not guarantee an independent, nonpartial, objective review of tax decisions. The committee feels that the Montana taxpayer needs some avenue of recourse, besides the tax administrators or the courts, to evaluate his tax treatment. We feel this new proposed section will enable the legislature to set up the proper machinery at a local level, and give the taxpayer an independent body to which he can appeal. Again, I say, we thought we had spelled it out in too much detail. We had to provide for five. Maybe we don't need that many.

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We are very interested in having it on the local level. We feel that the legislature is the only one that can do this. Now, it is the thinking, and I would say that Mr. Wagner and Mr. McDonough have been instrumental in working on this particular section. It is their feeling that this board or person or whatever the unit is, who is going to appeal this, would have the right to go through these records, naturally, to establish what had been done and what hadn't been done, so that they would have the authority that any other person does, of any rank, to see all the records. We strongly feel that the taxpayer has a right to this independent tax review procedure. Again, I reiterate, we have in no way changed our concept. We just feel that we were too legislative in our former section seven, and now we recommend this shortened plan to this group. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there debate or discussion on the committee's proposed section seven -- amended section seven? If not, Members of the Committee, you have before you for your consideration upon the motion of Mr. Rygg, the chairman of the committee, that when this committee does arise and report after having had under consideration the amendment they propose to section seven of the majority report, that this body recommend that the same be adopted. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: Section seven is adopted as amended. Will the clerk please read section eight?

CLERK SMITH: (Reading) Section eight, State Indebtedness: No state debt shall be created unless authorized by three-fifths vote of the members of both houses of the legislative assembly. State debts cannot be created to cover deficits incurred when appropriations exceed anticipated revenue during any budget period. Section eight, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I move that when this committee does arise and report after having had under consideration section eight of Proposal Number Seven, it recommend the same be adopted. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: The present constitution restricts the state to a hundred thousand dollar debt limit. Dollar limits do not reflect inflation, so the committee felt the limit should not be set in dollar amounts. We have seen that an unrealistic dollar limit only encourages circumvention. Some constitutional debt limits are set at a percent of assessed valuation. Reassessments of evaluation do not keep up with inflation either. Most modern, assessed values are lower percentages than would necessarily be that of the market value.

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Such a debt limit could starve governments for borrowing if this percentage figure were locked into the constitution. A state wide election requirement is an extraordinary limitation to place on any action of a sovereign state which is required to carry on government. Most states do hold that, not withstanding debt limits, some obligations are not considered debt. Usually this type of limited obligation, is in the form of revenue bonds, which are payable exclusively from charges or rentals for the use of some facility or service, such as housing, food service, student union buildings, etc. Even on these limited obligations, some have a debt limit, usually based on a percentage of the average revenue for the past three or four years, and then they say that the payments of the principle interest cannot exceed that. Again, such a percentage is a difficult figure to lock into a constitution. So, it seems that if a debt limit cannot be clearly stated, it will only lead to ambiguities. We feel, as do many others in this area, the best way to be sure you aren't going to have ambiguities is to remove the debt limitation completely. Now, Minnesota abolished its debt limit in 1962 and Illinois did in 1970. The committee feels that with the extraordinary majority requirement of sixty percent, this should prevent any unnecessary programs, and it should also be viable enough so this section should be in use for many generations. Now, after the Romney hearing, Delegate Nutting was concerned with

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the wording that might allow the legislature to create a debt to balance the budget, so that is why we added the last sentence. I might say that a few of us met with a group of senators and representatives who were most from the Senate Claims and Appropriations Committee, who have a very understanding need of the legislature. We did present this to them and I will say that some of them were concerned that we didn't have a debt limit. They suggested that we did check with some more bond houses. We had already checked with at least one, and they thought our wording was ample. However, at the request of this group, we did some more research on it. We did call a bond salesman in Minneapolis, and he referred us to a Mr. Whitney of Dorsey, Winfort, West and Halladay of Minneapolis. They are a legal firm, as I understand it, who are very conversant with the bond problem in all the states. I have a letter here signed by Mr. Whitney. It's rather long, so I'm not going to read it, but he read our proposed section, and lists it here. Then, his comment is: This draft is entirely workable, it seems to us, if the decision is made to omit debt limits from the constitution and to permit them to be established by the legislative assembly. So, I suppose that what we are asking you then, is whether or not you feel that this limit should be ereased, and we have the assurance, at least of this firm, that that wording would be workable in the future. This firm is fairly knowledgeable in Montana's

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bonding problems, because they did handle much of the work in the past. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, would the gentleman, Mr. Rygg, yield to a question?

DELEGATE RYGG: Yes, I'll try.

DELEGATE SCHILTZ: Mr. Rygg, assuming that we had a bicameral legislature with one hundred fifty members in it, is it your version here that ninety members from both houses would be necessary whether they had three-fifths from one house or not?

DELEGATE RYGG: I would think our feeling was three-fifths of either house or, I suppose then, three-fifths of one house.

DELEGATE SCHILTZ: Will you give me time to work on an amendment? I don't think you said that.

DELEGATE RYGG: That's possible, Mr. Schiltz. I think that was the feeling of the committee. I think I'm correct. The wording may be wrong on that. Mr. Drum, do you have an answer to that?

DELEGATE DRUM: Mr. Chairman. Perhaps I could assuage Mr. Schiltz's worries. The way we thought we worded it is we wanted to make it tough, and we wanted to make sure that sixty percent of the people that were elected by the people, would be the ones that would act on this, rather than sixty percent

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of the people who happened to be there on any particular day. We want sixty percent of the people in each house to vote in the affirmative before the --

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Berg.

DELEGATE BERG: Would Mr. McDonough yield to a question?

DELEGATE McDONOUGH: Yes, Mr. Berg.

DELEGATE BERG: As I examine not only your section eight, but the balance of the sections throughout the entire article, I don't find any limitation proposed for cities or municipalities, either on their borrowing capacity or the limits thereon. I was wondering if that was an intentional ommission, or is it otherwise covered?

DELEGATE McDONOUGH: Mr. Berg, we don't put any limits on it in this constitution. In section ten, when we talk about local government, we are talking about cities, counties, school districts, etc.

DELEGATE BERG: Would Mr. McDonough yield to another question?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE BERG: On section ten, you provide for subdivisions and districts. Perhaps I should remind you that a municipality is neither a subdivision of the state, nor a district of the state. I'm wondering if, therefore, there is

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an ommission.

DELEGATE McDONOUGH: It isn't so much an ommission. I think we have some opinions from our research assistants that a city is a subdivision, but we'd be very glad to change it if you want to change it, but we don't want too much itemization so we get into rule of exclusion.

DELEGATE BERG: Thank you.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move to amend section eight, line six, page fourteen, by striking the word, both, and substituting in lieu thereof, each, and striking the 's' on houses.

CHAIRMAN GRAYBILL: Say that again. You want to strike the word, both --

DELEGATE SCHILTZ: And substitute in lieu thereof, each, and strike the 's' on houses. We'll tidy it up after that. I just want to be sure that's their intent.

CHAIRMAN GRAYBILL: Mr. Schiltz. Mr. McDonough.

DELEGATE McDONOUGH: That would be all right. We'd approve that amendment.

CHAIRMAN GRAYBILL: All right. Members of the body, Mr. Schiltz has proposed to amend section eight on line six, by striking the word, both, the third word in the line, and putting in in place of it, the word, each, so that it reads by a three-fifths vote of the members of each house of the legis-

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lative assembly. So many as shall be in favor of that amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Is there further debate?

Mr. Mahoney.

DELEGATE MAHONEY: Mr. President. I would like to ask one of the committee -- and I don't know who wishes to answer -- what you mean down there in line seven. State debt cannot be created to cover deficits incurred when appropriations exceed anticipated revenue during any budget period.

CHAIRMAN GRAYBILL: I guess you haven't got any takers, Mr. Mahoney.

DELEGATE MAHONEY: Well, I'll try to get my own interpretation, Mr. President.

CHAIRMAN GRAYBILL: Mr. McDonough, do you care to answer?

DELEGATE McDONOUGH: I think, Mr. President, that it is self-explanatory.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Well, Mr. President, may I speak?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE MAHONEY: Here she goes. We're going fed-

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eral. We're going fast. This is it. I don't know what you're going to do if the legislature is in debt. With all your laws and that, somebody's going to pay it. You're not going to go out. We had a precedent, even with the other one. We had a precedent that set out here back in '33 when they passed a bill to go out here and get the warranted indebtedness taken out of some five million. I'm the only man probably in this room that had to wait to get state warrants cashed. They would only cash enough for me to eat on. This is an actual fact. I'm so careful. I don't want this greatest state in the union, that has so small a debt -- when I go out and see the federal government going in debt the way it's going in debt. Thank goodness, we stand out here alone as one state in the union with no indebtedness. We have no warranted indebtedness, and I just see, thank goodness, the legislature in its wisdom, we're going to have a surplus in the general fund. I think that's marvelous. This criticized legislature around here did do something good. It kept our funds in the black. And this is what we're doing here. We're now going to exceed all the limit, and by a three-fifths vote of this legislature -- not the old necessary two-thirds that we used to have on exceptional cases -- three-fifths, and go in debt. Waves of hysteria are coming and going. We had to go out to the voters before. Now, we're going to do this by three-fifths, and if it's a unicameral legislature of a hundred, that's sixty can

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decide to put the state of Montana in debt terrifically. I question whether we want to do it, and I don't see what you're going to do in section seven. You say it's self-explanatory. As I read it, state debt cannot be created to cover deficits incurred by appropriations except anticipated revenue during any budget period. Are you going to go to the next session of the legislature and pay this off first before you can continue government? This is what I want to know. But, no, you are going to pass a debt with sixty percent of the body, unicameral, or sixty percent of two bodies, if it's bicameral. We're going so loose on this financing. I don't understand the committee for going out this far. If they'd have said three-fourths, I wouldn't have had quite the objection, but two-thirds to go from the vote of all the people of this state, a majority vote, to go down to sixty members, unicameral. I think we're getting a long way down the road.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: I heartily concur in the comments of Mr. Mahoney a few moments ago. We all know how hard it has been in times past, to get bond issues through for various purposes. I submit that that was one of the advantages of the old system. Public officials thought long and hard, and planned extremely carefully, before they put something up to a vote of the people on a bond issue. Under the present system, as Mr. Mahoney has pointed out, it will take just sixty people

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on a unicameral body, to approve a debt, that would presumably be a bond issue. I submit for your consideration the very real possibility that this planning that we have had to use in the past will go down the drain. There will be all kinds of projects proposed here to put the people of Montana in debt for projects that the public, as a whole, probably does not want.

CHAIRMAN GRAYBILL: Is there further discussion.

Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman. I rise in support of Mr. Mahoney's objections to this provision. We right now have in the planning stage this highway complex building. There is a building for the supreme court being planned. If the proposal of the committee goes through, we'll be back into the state we were in when I started practicing law in 1933. I can recollect that the warrants of the cities and counties, and, as Mr. Mahoney stated, of the state of Montana, were not cash items. You had to stand in line. You had to wait, or you had to discount them if you wanted to get some cash out of them. I think this is extremely dangerous. We're here to write a constitution, true enough. We have some responsibilities also as delegates to this convention. Part of those responsibilities are to protect the people of the state of Montana from a debt that will be like the old man of the sea on their backs. I think we ought to take a careful look. The

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old constitution had it in a provision that the legislature had to balance the budget. I fail to find that provision anyplace in this proposal.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Will Mr. Aronow yield to a question please?

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Well, I'll try.

DELEGATE REICHERT: Section nine states appropriations by the legislative assembly shall not exceed anticipated revenues during any budget period. Doesn't that imply balancing the budget?

DELEGATE ARONOW: Yes, it does, but you also have to read this constitution together. The courts have said that you pick it up by its four corners, like any law. Here in one place, you have extremely lax, and in the other place you have something else, and what was the intent?

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman. I just wish to state that I speak in support of the majority proposal. I believe the legislature will attempt to balance the budget.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President. Ever since I read the proposal of Revenue and Finance and section eight, it really shook me. I view, with great alarm, the possibilities that

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could be incurred here by putting the state in such a financial jackpot as the federal government is in now. Montana has kept its skirts clean. We don't have any indebtedness now, and I submit that the old provision, when you had to go back to the people and get their vote to incur an indebtedness, is a good, sound safeguard and I think we should preserve it.

CHAIRMAN GRAYBILL: Very well. The issue is on section eight as amended.

DELEGATE MAHONEY: May I make a short amendment?

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: I move to amend in section eight, in line five, strike out the words three-fifths and make it three-fourths.

CHAIRMAN GRAYBILL: Mr. Mahoney has suggested that we replace the language, three-fifths, by the language three-fourths, in line five of section eight as proposed by the committee.

Mr. Mahoney.

DELEGATE MAHONEY: All I'm trying to do is get this a little above the governor's veto. Under the present system, a governor's veto could not have even stopped it, because three-fifths of the members could have passed it and the governor wouldn't have anything to say under a veto. I'm just trying to get a little bit above a governor's veto.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr.

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Mahoney's amendment that we change three-fifths to three-fourths in line five of section eight, so it would read: No state debt shall be created unless authorized by a three-fourths vote of the members of each house of the legislative assembly. So many as shall be in favor say -- Do you want a roll call vote? Do you want to speak?

DELEGATE FURLONG: I'd like to speak, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well.

DELEGATE FURLONG: I was hoping some other member of the committee would get up, but what I think we're doing by locking it in at three-fourths is effectively destroying the intent. I've heard a lot of talk about the state not being in debt, and of course, the state is in debt. It's in all kinds of debt. We have revenue bonds and other kinds of bonds by which we build buildings, which are declared unconstitutional. We all know that we can exceed the anticipated income and plan a budget on it, and when the income doesn't come in, we end up in debt. I think the three-fourths vote effectively destroys the concept that the committee attempted to establish when they authorized the state to go, if you'll pardon the expression, honestly into debt by a will of the legislature. I think three-fourths destroys that. I might be willing to go along with two-thirds but, if you put the three-fourths in here, you're effectively killing the concept of the section, and I stand in opposition to it.

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CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Will Mr. McDonough yield?

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. Brown.

DELEGATE BROWN: Assuming whatever we end up with, three-fifths or three-fourths, is there any way that a simple majority could refer a debt question to the people, under this section?

DELEGATE McDONOUGH: Not under this section. That's why three-fourths is just too high. That's three-fourths of all members, not just present and voting; that's all members when he changes it this way.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: It seems to me that when we passed the legislative article, we provided that the legislature could submit any question to the people by referendum, and so surely, if there's a problem about creating a debt, they can submit it to the people just like they can refer any other measure to the people. I'm in favor of the majority of the committee report and I think the legislature, if they can or wish, to submit a debt to the people, they can. It seems to me that we don't have to protect the people of Montana from themselves. If they do go heavily in debt, I would think that the people will remove that legislature the next session. I would think that the committee proposal gives flexibility to the legislature

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to actually meet the problems and, as Mr. Furlong said, go in debt honestly. I'm willing to trust the future legislature, that they will do it judiciously.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Will Mr. McDonough yield to a question?

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Yes, sir.

DELEGATE AASHEIM: Do you refer here to debentures that might be floored by the legislature to provide for buildings or something of that nature?

DELEGATE McDONOUGH: I think we refer to about everything that might be considered under past decisions as a state debt. I think that goes to any type of debt that is created in which you're pledging any type of taxing revenues to pay. It's very possible that -- and I don't think they are covered -- the debt that is created on revenue bonds, such as the room rents, food facilities, etc., of the university system. But, I do think that any time you're pledging any taxes to pay off those bonds, you're creating a state debt.

DELEGATE AASHEIM: Will you yield to one more question?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE AASHEIM: Do we have any limitation, like three-fifths or three-fourths on now, or can a majority of the

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legislature pass a bill which would put us into bond indebtedness?

DELEGATE McDONOUGH: Well, up until the last supreme court opinion, the court thought that any state debt in which you pledged the full faith and credit through a property tax to pay off, had to be referred to the people, but others did not. However, last fall the supreme court changed their mind and said that any debt created in which you pledged any taxing revenue, such as the income tax, had to be referred to the people, and subject also to the hundred thousand dollar debt limit. That's essentially what the present law says.

DELEGATE AASHEIM: Will you yield to one more question?

DELEGATE McDONOUGH: Yes.

DELEGATE AASHEIM: When the legislature floated bonds for the support of the veterans of the second world war, and they proposed to use the cigarette tax to pay for that indebtedness, didn't a majority of the legislature approve that?

DELEGATE McDONOUGH: I think they did. Tom Joyce says it was by initiative. What happened in that supreme court decision last fall, they said that it would not effect the constitutionality of any previous bond issues issued, etc.

DELEGATE AASHEIM: Thank you.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President. There are certain-

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ly many instances where small bond issues are desirable for small projects, without the necessity of referring them to a vote of the people. If the legislature, in its wisdom, felt the need for a small addition to this building, for instance, it might cost a half million dollars. The public, at large, would not be conversant with what the needs of the building were, and it would be a very clumsy proposition to have to submit that to the people. This is one of the problems, I think, that the committee is trying to avoid. It seems to me, however, that there are other projects that the public should vote upon. I'm wondering if perhaps some addition in here, by way of a limitation, might not be in order. For instance, we could say in section six, as an addendum to it, or section eight, I beg your pardon, that all indebtedness in excess of a million dollars -- to take a figure out of the air -- shall be approved by the electors of the state of Montana. That would satisfy, I think, what I think the committee is really getting at here, and would also protect the public.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chair man, could I direct a question to Mr. McDonough?

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Yes, Ma'am.

DELEGATE ECK: The wording in this really concerns me, because it says, no state debt shall be created unless

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authorized by a three-fifths vote of the members. Now, don't you think that this could be interpreted to rule out a referendum?

DELEGATE McDONOUGH: I don't know. I haven't studied the General Government section that close as to whether or not that could be.

DELEGATE ECK: This concerns me. I --

DELEGATE McDONOUGH: Wait a minute. There's no reason why, if the legislature passed it by a three-fifths vote, if the General Government section is broad enough, why the people couldn't demand a referendum on it if they didn't like it.

DELEGATE ECK: I can accept that, but I was thinking that suppose we adopted the three-fourths -- and I like the idea of three-fourths because I think that the people are concerned about debt limits. Maybe their fears are really groundless, but I do know that this is one area where there is a lot of concern. If we adopted a three-fourths, it could be very, very difficult, as you say, -- it could be even with the two-thirds -- to get this kind of approval. Yet, there might be issues that you would really want to refer to the people. There might be issues where there is not that much general agreement among the legislature. I think the article ought to be flexible enough so that this option is open to the legislature. I would like to see some wording change here, but I

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don't think that I'm able to make it. Thank you.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. President, may I speak on that? Actually, if the legislature on this section, did pass it by a three-fifths vote, there's no real reason why they couldn't condition the enacting legislation on a referendum of the people before it became effective.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I join with Mrs. Eck. I have some concern that we're excluding referendum or initiative. If there's any doubt, I would now like to make an amendment to the substitute motion. I'm talking on page fourteen, line six, after legislative assembly.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Yes, sir.

CHAIRMAN GRAYBILL: I see your point, and I certainly am in favor of letting you have that right, but we have Mr. Mahoney's amendment to change three-fifths to three-fourths. I don't see how you can amend that. Do you want to substitute for it, is that it?

DELEGATE BROWN: Let's vote on Mr. Mahoney's and then I'll offer an amendment after that.

CHAIRMAN GRAYBILL: Right. Otherwise, you'll kill his issue if you offer a substitute amendment.

DELEGATE BROWN: I will now withdraw my amend-

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ment.

CHAIRMAN GRAYBILL: All right. I'll come back to you. We're still on Mr. Mahoney's amendment to change three-fifths to three-fourths of the total membership of each house of the legislative assembly.

Mr. Martin.

DELEGATE MARTIN: I wonder if Mr. McDonough will yield to a question.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Yes, sir.

DELEGATE MARTIN: We have a present limitation of one hundred thousand dollars in the constitution.

DELEGATE McDONOUGH: That's right.

DELEGATE MARTIN: But, in looking over the state auditor's monthly report, you find that our state indebtedness is about eighty-three million dollars, is that right? How do we get there?

DELEGATE McDONOUGH: I don't know enough about the figures, but actually the eighty-three million dollars, if I remember correctly is the revenue bonds issued by the university system and maybe other types of government. That's why sometimes I think when you think of this state indebtedness and the limits of the revenue bonds, how they can go right around a state debt limit on revenue bonds. It's always important, but now the state is eighty-three million dollars in debt, if

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Mr. Martin's figures are correct, of which the only pledged revenues therefore. But, you know and I know, if those bonds started to default, there would be a lot of pressure on the legislature to make those payments on those revenue bonds, and they would probably make them in order to keep the state's credit -- Even though the buyers of these revenue bonds knew at the time that they could only look to the revenue to pay it. So, there is indebtedness created, and there's indebtedness created all the time that's outside of this limitation.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I think maybe I can throw a little light on the subject of what Mr. Aasheim is talking about. This is an opinion from this same firm who has dealt with Montana and their bonds. They say, notwithstanding constitutional debt limits, in almost all states including Montana, the courts hold that some obligations are not, in parenthesis (debt). Typically, as in Montana, these are either revenue bonds payable exclusively from charges or rentals from the use of some tangible facility or service, or special assessment bonds payable exclusively from special assessments which are levied by reason of the special benefit resulting to individual property for some public improvement. I'm sure that Mr. Aasheim is correct. I'm sure that when the money was appropriated for any long-range building funds, it only required a majority of each house to do that. I believe that's correct. So, I think

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the argument probably is what is really debt and what isn't. From the revenue bonds, they more or less call out a limited obligation rather than a state debt. I didn't speak against this three-fourths because I didn't think it had a chance of passing. I think three-fourths is too high, and I would resist the three-fourths.

CHAIRMAN GRAYBILL: Mr. Mahoney, do you want to close?

DELEGATE MAHONEY: Please. There's an awful lot of difference between a revenue bond to pay for a university or something like that, or something in revenue. But, when you start taking a state general fund, and tying it up with a debt -- and that is what you could do with sixty, if it's unicameral -- This will really be good. I'm telling you, this is the best I've heard. Then, we turn around and go back to that other section over here that I tried to strike yesterday, where we are going to start exempting classes of property. This could get really rough on the final end. The thing of it comes that I think Fred is correct when he said eighty-three million, but these are revenue bonds. They were not put out by the people. The last thing we voted on, I believe, is that cigarette tax, which we pledged for a -- I think it's pledged entirely for, at that time, solders' bonus. Now, I think that if we go out here and make it this easy, it's going to be very easy instead of placing revenue bonds -- so as to force these things to be collected, we will be in here getting everything on

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state general obligation bonds. The pressure is going to be very easy to come down here, under this unicameral system of the legislature, and work out and get only sixty of them. Now, I'm just trying to let you get seventy-five of them. Then, if the governor -- he won't have to worry. If he vetoes it, they can still pass it over his head. I certainly hope that the three-fourths will pass.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Mahoney's amendment on line five of section eight as proposed by the committee, to change the numbers, three-fifths, to three-fourths. Do you want a roll call?

DELEGATES: Yes.

CHAIRMAN GRAYBILL: Okay. So many as shall be in favor of Mr. Mahoney's amendment, vote Aye. So many as shall be opposed, vote No. Has every delegate voted? Does any delegate wish to change his vote? Very well. Take the vote.

Aasheim	- Nay	Barnard	- Aye
Anderson, J.	- Aye	Bates	- Abs
Anderson, O.	- Nay	Belcher	- Abs
Arbanas	- Abs	Berg	- Nay
Arness	- Nay	Berthelson	- Nay
Aronow	- Aye	Blaylock	- Abs
Artz	- Nay	Blend	- Aye
Ask	- Nay	Bowman	- Nay
Babcock	- Aye	Brazier	- Aye

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1	Brown	-	Aye	Habedank	-	Nay
2	Bugbee	-	Aye	Hanson, R. S.	-	Aye
3	Burkhardt	-	Nay	Hanson, R.	-	Nay
4	Cain	-	Abs	Harbaugh	-	Aye
5	Campbell	-	Nay	Harlow	-	Nay
6	Cate	-	Aye	Harper	-	Aye
7	Champoux	-	Nay	Harrington	-	Abs
8	Choate	-	Aye	Heliker	-	Nay
9	Conover	-	Aye	Holland	-	Abs
10	Cross	-	Aye	Jacobsen	-	Nay
11	Dahood	-	Nay	James	-	Nay
12	Davis	-	Aye	Johnson	-	Aye
13	Delaney	-	Aye	Joyce	-	Nay
14	Driscoll	-	Nay	Kamhoot	-	Aye
15	Drum	-	Nay	Kelleher	-	Nay
16	Eck	-	Aye	Leuthold	-	Aye
17	Erdmann	-	Aye	Loendorf	-	Abs
18	Eskildsen	-	Abs	Lorello	-	Aye
19	Etchart	-	Abs	Mahoney	-	Aye
20	Felt	-	Abs	Mansfield	-	Aye
21	Foster	-	Nay	Martin	-	Aye
22	Furlong	-	Nay	McCarvel	-	Nay
23	Garlington	-	Nay	McDonough	-	Nay
24	Graybill	-	Nay	McKeon	-	Nay
25	Gysler	-	Aye	McNeil	-	Aye

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Melvin	-	Aye	Siderius	-	Nay
Monroe	-	Abs	Simon	-	Aye
Murray	-	Aye	Skari	-	Aye
Noble	-	Aye	Sparks	-	Nay
Nutting	-	Aye	Speer	-	Nay
Payne	-	Nay	Studer	-	Aye
Pemberton	-	Aye	Sullivan	-	Nay
Rebal	-	Abs	Swanberg	-	Aye
Reichert	-	Nay	Toole	-	Nay
Robinson	-	Nay	Van Buskirk	-	Abs
Roeder	-	Nay	Vermillion	-	Abs
Rollins	-	Nay	Wagner	-	Nay
Romney	-	Aye	Ward	-	Aye
Rygg	-	Nay	Warden	-	Nay
Scanlin	-	Nay	Wilson	-	Aye
Schiltz	-	Aye	Woodmansey	-	Aye

CLERK HANSON: Mr. Chairman, forty-two voting Aye, forty-three voting No.

CHAIRMAN GRAYBILL: Forty-three having voted No, and forty-two voting Aye, the motion fails and it remains three-fifths. Mr. Habedank, you sent up an amendment. Would you like the Chair to read it? Mr. Clerk, will you read Mr. Habedank's amendment?

CLERK HANSON: (Reading) Mr. Chairman. I move to amend section eight to read as follows: Unless the law author-

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1 izing the same shall have been submitted to the public at a
2 general election, and shall have received a majority of the
3 votes cast, for and against it at such election, no state debt
4 shall be created unless authorized by a two-thirds vote of the
5 members of each house of the legislative assembly. State debt
6 cannot be created to cover deficits incurred when appropriations
7 exceed anticipated revenues during any budget period. Signed,
8 Habedank.
9 CHAIRMAN GRAYBILL: Mr. Clerk, may I have that?
10 The substance of Mr. Habedank's amendment then is to change
11 the committee's proposed section eight by retaining the last
12 sentence, but by putting in the first sentence that the matter
13 must be submitted to the electorate, unless it has received a
14 majority of two-thirds of the members of each house. Mr.
15 Habedank.
16 DELEGATE HABEDANK: Mr. Chairman. The first sentence
17 of that -- or the first phrase of that -- is taken from the
18 last four lines of section two of the present Article Thirteen
19 and is intended by me to cover the situation where it is pos-
20 sible that three-fourths of the legislative assembly cannot
21 agree, and they will still have the opportunity, by a majority
22 vote, to refer the matter to the people. If a majority of the
23 people vote for the indebtedness, it can then be created with-
24 out a three-fourths vote of the legislature. The next change
25 is just merely changing the words, three-fifths, to three-fourths

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as contained in the balance of the proposal of the --

CHAIRMAN GRAYBILL: Mr. Habedank, you meant two-thirds. I don't want to --

DELEGATE HABEDANK: Two-thirds, yes. I wish to reduce that from three-fourths to two-thirds, but it allows the legislature leeway as intended by the committee, and it still gives the opportunity for the creation of debt by a majority vote of the people.

CHAIRMAN GRAYBILL: I'll read that first sentence again for you. Unless the law authorizing the same shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for or against it at such election, -- then it goes back into the regular thing. No state debt shall be created unless authorized by a two-thirds. So, it has the effect of saying that you have to have two-thirds in the legislature, or you have to submit it to the electorate. I think that correctly states it.

Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I sense the feeling of the committee, and I think it's a good arrangement. I think the committee, if we polled them, would accede to this and agree to this amendment.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Berg.

DELEGATE BERG: Mr. Chairman. I rise in opposition

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to the proposed amendment, and I am concerned basically with the nature and character of the wording as it's proposed. I think that when you say, no state debt shall be created. If you use that language, you then are limiting the creation of debt of any kind, whether by revenue or general obligation, to action by the legislature. You may very well be foreclosing the right to do it by initiative or perhaps even to deny it by referendum. I would suggest, in considering this, that you consider that you are talking principally about general obligation bonds, and that the sentence should read in such a manner that it is in an affirmative statement, rather than a negative statement. Now, I don't propose this as an amendment at the moment, but I would like you to consider, when you're voting on this particular amendment, language that might be read such as this. General obligation debt of the state may be incurred upon a two-thirds vote of the members of each house of the legislative assembly. This is an affirmative statement rather than a negative approach. It relates entirely to general obligation. It does not restrict revenue bonds and does not foreclose the possibility of debt creation by initiative or the refusal of it by referendum.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I have a little confusion about this and I guess you could clear it up, because we don't have it before us. Do I understand from this amend-

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ment that there would -- that a two-thirds vote of each house would authorize the debt much as the committee reports provides, but that if they couldn't get two-thirds, a fifty-one percent vote would be sufficient to get a referendum?

CHAIRMAN GRAYBILL: I think that's the sense of Mr. Habedank's amendment. He changes the three-fifths to two-thirds, but he adds that if they can't get two-thirds, then any law could be passed by a majority submitting it to the electorate for a vote. Isn't that right, Mr. Habedank?

DELEGATE HABEDANK: That is my intent and, as far as I'm concerned, I don't feel it's necessary for this body to try to straighten out that language. Style and Drafting can straighten it out. It's my intention that a debt can be created by a majority vote of the people and referred to them -- majority of the legislature, or in lieu thereof, by a two-thirds vote.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Does the amendment provide, as the majority report does after I amended it, that it requires a two-thirds vote of each house?

CHAIRMAN GRAYBILL: Yes. I want to point out for everybody so we understand, it does say, unless the law authorizing the same shall have been submitted to the people. So, I don't think we've covered the initiative problem.

Mr. Aasheim.

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DELEGATE AASHEIM: Would Mr. Habedank yield to a question?

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Yes.

DELEGATE AASHEIM: Would this put a restriction on the building of a highway structure?

DELEGATE HABEDANK: I don't see that it would any more than the present wording of the Revenue and Finance Committee report. We've given them the power to do everything that they can do by a two-thirds vote. I would also have no objection to initiative measures. I want to preserve the situation -- It was my intent that we allow the people, by a majority vote, to create this and be referred to them.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: I'd just like to point out, while this discussion is going on, that when the General Government Report Number Twelve comes before us, its sections on initiative and referendum allow initiative and referendum on all matters, except appropriation of money. This was the substance of what the Legislative Committee thought through and passed on to them with our recommendation too. So, I just want you to be aware that if we do something here, we're looking down the road a little bit to maybe overturning their proposal on initiative and referendum.

CHAIRMAN GRAYBILL: Mrs. Eck.

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DELEGATE ECK: Mr. Chairman. I think I need a couple of things cleared up here. One is -- maybe Mr. Brown from General Government can answer this one for me. My question is, is debt in the same classification as an appropriation, or wouldn't those be different?

CHAIRMAN GRAYBILL: Mr. Brown.

VICE PRESIDENT BROWN: Well, it would be my opinion that they would be different. I'm going to offer a substitute motion to clear this up, I hope, unless I cloud it up more.

DELEGATE ECK: Why don't you offer your substitute motion now? Maybe that's what I'm waiting for.

CHAIRMAN GRAYBILL: I've got two or three others up here, but I'll give you the floor, Mr. Brown. I can't figure them out either.

VICE PRESIDENT BROWN: Mr. President. I move as a substitute motion to change three-fifths to two-thirds. Then on page fourteen, at line six, after legislative assembly, add the following: or unless authorized by a majority of the electors at a general election. So, all you need is an election, however they get to it.

CHAIRMAN GRAYBILL: At a general election?

VICE PRESIDENT BROWN: Well, I used the words of the old constitution. Let's strike general and just say, at an election.

CHAIRMAN GRAYBILL: At an election.

VICE PRESIDENT BROWN: Or, I don't know if we even need, at an election. Just, or unless authorized by a majority of the electors period.

CHAIRMAN GRAYBILL: You really don't want, at an election, in there?

VICE PRESIDENT BROWN: I don't want election in there. I'll leave that up to Mr. Schiltz. I don't think you need election in there. That's the only way it could be authorized.

CHAIRMAN GRAYBILL: That's on line --

VICE PRESIDENT BROWN: On line six after, legislative assembly. I'm adding the following: or unless authorized by a majority of the electors.

CHAIRMAN GRAYBILL: All right. The substance of Mr. Brown's substitute motion is to change three-fifths to two-thirds, and to add the words so it'll read, authorized by a two-thirds vote of the members of each house of the legislative assembly, or unless authorized by a majority of the electors, which he thinks has the effect of saying that if the legislature submits it on a fifty-one percent vote, fine, or if it comes by initiative, fine. That's the substance of Mr. Brown's substitute motion. Is there discussion?

Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. I think either Mr. Brown's motion or mine would reach the point where the Style

and Drafting Committee could accept it. As long as Mr. Brown agrees to the two-thirds, I support his substitute motion.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: I rise to support increasing it to two-thirds and the vote of the people. I think we've got to remember what we did yesterday in relation to this and some other things in this matter. The majority report takes off the two mill levy on all the real and personal property taxes in the state of Montana. The majority report then removes the local assessment, equalization and appraisal of this property and vests that in the state of Montana. So, when they're worried about the highway department's bureaucracy, I'm afraid we've created one that will put it to shame, if this works for about ten years. Now, they've taken off any debt ceiling as to how much the legislature then can levy. Now, remember this is the same legislature that last week, they didn't even want to give any authority to fix how many day's notice they had to give to hold a hearing. This is that same legislature that we talked about hearings here last week. So, I would support anything that would increase some of the protections that the general public is going to have in this method of finance. When you talk about the Anti-diversion thing scaring the people, that's not going to scare them near as much as when you take all the taxing power away and place it in the state; all the appraisal power. Take it out of the hands of

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your local assessor and county commissioner. When you take off your two mill debt levy -- I don't know whether it has been mentioned, but the annual mill levy for the university system, or any of the rest of them, won't have to go through that struggle anymore, thank goodness. We won't have any mill levy to be concerned about how much tax can be placed on, but they will be able to appraise the property high enough and levy enough taxes so that won't really work any hardships. So, I support making some tighter restrictions in here.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I think we're a little bit confused as to the present power of the legislature to go into debt. I would move that we pass consideration of section eight until we reconvene after lunch and then maybe we can find out what we are presently doing in this area. I don't think we know exactly what we're talking about right now.

CHAIRMAN GRAYBILL: Mr. Aasheim has made a motion to pass section eight until 1:00 o'clock P.M. Is there discussion?

Mr. Kelleher. Do you want to discuss that?

DELEGATE KELLEHER: No.

CHAIRMAN GRAYBILL: Very well. All those in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

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DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it and it fails.

Mr. Berg.

DELEGATE BERG: Mr. Chairman. I move as a substitute motion that the first sentence of section eight read: General obligation debt of the state may be incurred by a two-thirds vote of the members of each house of the legislative assembly, or -- correction -- or unless authorized by a majority of the electorate.

CHAIRMAN GRAYBILL: All right. For the benefit of the body, you're going to call that an amendment to Mr. Brown's substitute motion. We can't have another substitute motion, but it does have the effect only of changing Mr. Brown's amendment from a negative to a positive statement. It does have the additional amending effect, Mr. Brown, of stating general obligation debt rather than no state debt. Therefore, it eliminates, according to Mr. Brown -- according to Mr. Berg, the problem of the revenue bond being limited by this language. I'm going to allow the amendment and Mr. Berg, you may discuss it.

DELEGATE BERG: The Chair has already put it exactly as I intended, so I'll not make any further statement.

CHAIRMAN GRAYBILL: Mr. Brown.

VICE PRESIDENT BROWN: Mr. President. I rise in opposition to the amendment. The reason I do so -- I'm like

Mr. Aasheim. I don't want to get into a debate on debt -- but the reason I oppose it is that the present constitution, Article Thirteen, section two, when they talk about debt, they say, will create any debt. They don't refer to general obligation, revenue or not, and that section, I presume, has been litigated. Mr. McDonough is familiar with it and I'd hate to change the wording of the present constitution. I'd defer to Mr. McDonough.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: When you get into general obligation bonds, you might only be limiting this section to general obligation bonds, which are pledged. The payment thereon is property taxes only. It might open you up wide as to pledging income tax, and maybe not the other full faith and credit of the state. In the original draft, we put in state debt especially, because it has been interpreted by the supreme court a number of times in section two of the present Article Thirteen, and we mean it the same way it's in there, and we don't want to get into some other thing like general obligation bonds.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Will Mr. McDonough yield to a question?

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Yes, sir.

DELEGATE BERG: Isn't it true that of the approxi-

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mately eighty-six million dollars debt that we have in the state now, that has been created almost exclusively by revenue bonds? Therefore, does not the constitutional limitation apply principally, if not only, to general obligation bonds?

DELEGATE McDONOUGH: I hate to change the wording of our present thing to general obligation. Now, state debt has been interpreted as to what it means. I think it means pledging the full faith and credit of the state. If you get into GO bonds, then you get into the position of what is a GO bond? Is a GO pledging that full faith and credit only from property taxes, or partially from property and income taxes, or some other excise taxes that can be segregated and pledged to the payment of this? It's actually taxes and not revenue from a source to make it revenue bonds? That's why I don't want to get into GO's.

DELEGATE BERG: Mr. Chairman. I yield to Mr. McDonough's position and withdraw the amendment.

CHAIRMAN GRAYBILL: All right. Mr. Berg's is withdrawn, and we're back to Mr. Brown's motion to change three-fifths to two-thirds and add the words, or unless authorized by a majority of the electorate. In other words, to say that the legislature can create debt by a two-thirds or by referring it to the electorate. It also covers the initiative problem, because it doesn't forestall it. Is there further discussion of Mr. Brown's proposed amendment -- substitute motion. A roll

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call has been called for. Do you want to close, Mr. Brown?

VICE PRESIDENT BROWN: I close.

CHAIRMAN GRAYBILL: Wait a minute. Mr. Kelleher, do you have a question?

DELEGATE KELLEHER: I'd like to ask a question, if I may, of Mr. McDonough.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Yes, sir.

DELEGATE KELLEHER: State debt -- could you give me some examples of state debt in the first sentence, that would not be included in the last sentence? Are we talking about just general obligation bonds, or revenue bonds, or both? What's included in state debt in the first sentence, and is it any different from state debt in the second sentence?

DELEGATE McDONOUGH: No.

DELEGATE KELLEHER: It's the same thing. Well, then how could we go into debt that isn't excluded by the second sentence?

DELEGATE McDONOUGH: What we're talking about in the first sentence is debt issued on bond issues, etc., for capital expenditures. What we're talking about in the second sentence is any state debt issued and created for the purpose of beating those appropriations.

DELEGATE KELLEHER: For prior appropriations, is that right?

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DELEGATE McDONOUGH: Prior, or present at the time they're fixing up their budget.

DELEGATE KELLEHER: On the first sentence, you would authorize either general obligations or revenue obligations, either one? Would they be tied into revenue?

DELEGATE McDONOUGH: Revenue is not included in the first sentence.

DELEGATE KELLEHER: It is not?

DELEGATE McDONOUGH: No.

DELEGATE KELLEHER: Thank you.

CHAIRMAN GRAYBILL: You understand why, Mr. Kelleher? The term state debt has been defined by the courts, only to be that debt which pledges the credit of the state, and the revenue debt bond doesn't. Mr. Brown, do you want to close?

Mr. Rygg.

DELEGATE RYGG: I would just like to say, we were for Habedank's and he withdrew his. Brown's is about the same, so we would support that.

CHAIRMAN GRAYBILL: All right.

Mr. Brown.

VICE PRESIDENT BROWN: I close except to clarify that we do have members of each house in there now, don't we?

CHAIRMAN GRAYBILL: Yes.

VICE PRESIDENT BROWN: I close.

CHAIRMAN GRAYBILL: Very well. A roll call vote has

been called for. So many as are in favor of Mr. Brown's motion to change three-fifths to two-thirds and to add the words, or unless authorized by a majority of the electors, please vote Aye. Those who are opposed, vote No. Has every delegate voted? Does any delegate wish to change his vote? Please take the vote.

Aasheim	- Abs	Bugbee	- Aye
Anderson, J.	- Aye	Burkhardt	- Aye
Anderson, O.	- Aye	Cain	- Abs
Arbanas	- Abs	Campbell	- Aye
Arness	- Nay	Cate	- Aye
Aronow	- Aye	Champoux	- Aye
Artz	- Aye	Choate	- Aye
Ask	- Aye	Conover	- Aye
Babcock	- Aye	Cross	- Aye
Barnard	- Abs	Dahood	- Aye
Bates	- Aye	Davis	- Aye
Belcher	- Abs	Delaney	- Aye
Berg	- Aye	Driscoll	- Nay
Berthelson	- Nay	Drum	- Aye
Blaylock	- Aye	Eck	- Aye
Blend	- Aye	Erdmann	- Aye
Bowman	- Aye	Eskildsen	- Abs
Brazier	- Aye	Etchart	- Aye
Brown	- Aye	Felt	- Abs

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1	Foster	-	Aye	Martin	-	Aye
2	Furlong	-	Aye	McCarvel	-	Aye
3	Garlington	-	Aye	McDonough	-	Aye
4	Graybill	-	Abs	McKeon	-	Aye
5	Gysler	-	Aye	McNeil	-	Aye
6	Habedank	-	Aye	Melvin	-	Aye
7	Hanson, R. S.	-	Aye	Monroe	-	Aye
8	Hanson, R.	-	Aye	Murray	-	Aye
9	Harbaugh	-	Aye	Noble	-	Aye
10	Harlow	-	Aye	Nutting	-	Aye
11	Harper	-	Aye	Payne	-	Aye
12	Harrington	-	Aye	Pemberton	-	Abs
13	Heliker	-	Aye	Rebal	-	Aye
14	Holland	-	Abs	Reichert	-	Aye
15	Jacobsen	-	Aye	Robinson	-	Aye
16	James	-	Aye	Roeder	-	Aye
17	Johnson	-	Aye	Rollins	-	Aye
18	Joyce	-	Aye	Romney	-	Aye
19	Kamhoot	-	Aye	Rygg	-	Aye
20	Kelleher	-	Aye	Scanlin	-	Aye
21	Leuthold	-	Aye	Schiltz	-	Aye
22	Loendorf	-	Aye	Siderius	-	Aye
23	Lorello	-	Abs	Simon	-	Aye
24	Mahoney	-	Aye	Skari	-	Aye
25	Mansfield	-	Aye	Sparks	-	Aye

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Speer	-	Aye	Vermillion	-	Aye
Studer	-	Aye	Wagner	-	Aye
Sullivan	-	Aye	Ward	-	Aye
Swanberg	-	Aye	Warden	-	Abs
Toole	-	Abs	Wilson	-	Aye
Van Buskirk	-	Aye	Woodmansey	-	Aye

CLERK HANSON: Mr. Chairman, eighty-six Delegates voting Aye, two voting No.

CHAIRMAN GRAYBILL: Eighty-six Delegates having voted Aye, two voting No, Mr. Brown's amendment is adopted. The section now reads: No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the legislative assembly, or unless authorized by a majority of the electors. State debt cannot be created to cover deficits incurred when appropriations exceed anticipated revenue during any budget period.

Mr. Rygg.

DELEGATE RYGG: I move that when this committee does arise and report after having had under consideration section eight of proposal seven, that it be adopted as amended. Thank you.

CHAIRMAN GRAYBILL: You've heard the motion of Mr. Rygg, chairman of the Committee. Mr. Swanberg, for what purpose do you rise? You want to make another amendment, right?

DELEGATE SWANBERG: If I could, Mr. President, yes.

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CHAIRMAN GRAYBILL: Excuse me, I had it here. Mr. Swanberg.

DELEGATE SWANBERG: I would like to now move to amend section eight, by adding a portion of section two of our present Article Thirteen in our present constitution. The amendment just made by Mr. Brown goes a long way toward clarifying the problems we have here, but I don't think it goes all the way. Under the situation that we now have, under section eight, a debt can be created by a two-thirds vote of the legislature or it can be referred to the people and they can vote on it. The fact still remains that a two-thirds vote of the legislature can create a debt of any amount. I think this right to create debt in excess of a certain amount should remain with the people. So, I have submitted an amendment which would read as follows. This is out of the present constitution, in effect. No debt or liability shall be created which shall, singly or in the aggregate with any existing debt or liability, exceed the sum of one million dollars,--It used to be a hundred thousand dollars -- unless the law authorizing the same shall have been submitted to the people at a general election, and shall have received a majority of the votes cast for and against it at such election. I think that protection in the constitution is extremely important.

CHAIRMAN GRAYBILL: Very well. Mr. Swanberg wants to add as another sentence on line nine, at the end of section

eight, as proposed by the committee, the language that, no debt or liability will be created in excess of a million dollars unless it has been put to the people at a vote at an election.

Mr. Joyce.

DELEGATE JOYCE: Mr. President. I rise in complete opposition to this amendment of one million dollars. It seems to me that if this convention can't do anything more than face the issue squarely -- If we put one million dollars in there, all we're going to do is go back to the old system that has been practiced since 1889, of circumventing the constitution by creating the fiction that we're going to create revenue bonds. So, every debt to build any building -- you can't build a building for a million dollars any place -- then, before you can build a building, you have to submit the thing out to the people. It seems to me that that's foolish because the legislature, if they need a new building, they ought to be able to authorize to build it. We've got the protection in now that there's two-thirds must agree on it, and so you can't build any new unit at a university, you can't build any new building that's badly needed at the state capitol, without having an election. What the legislature has done in the past, of course, is they've got around the constitution by creating certain revenue bonds as they call them. Of course, that's just a fraud. Every time you have to have a test case

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then, to see whether or not this is really a revenue bond, or isn't, then you leave it up to the court. If they like the idea, then they say, yes, it's okay; it's revenue bonds, and if they don't like it, they can say, no, it's really a general obligation bond in excess of the one million dollars. It seems to me that we ought to get rid of this distinction between revenue bonds. If the state of Montana is going to create any debt, they ought to pledge the full faith and credit of the state of Montana to it, because we're going to pay the debt. We shouldn't create any debts where there's a possibility that we won't pay them back. All it does is in the interest market then, because it isn't a general obligation bond, they charge higher interest. It seems to me that the state shouldn't create any debt at all unless they intend to pay it. So, to put one million dollars and to require this rigmarole of stiffling the state to build any buildings, just seems like a gross step backwards. I think we ought to meet the issue squarely here and allow the people of Montana, through their elected representatives, to see whether or not they want to build a building. If they start building too many buildings, of course, the people will take care of them in the legislature. It seems to me that we can trust the future legislators to judiciously meet the problems of the time as they arise, rather than tying their hands with these artificial debt limits. I don't think that the people of Montana are

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going to be in any serious trouble whatever. If it's necessary to go in debt to build buildings, then how else can you -- you can't build a building in one year. None of us can afford to pay for a house in cash. Why shouldn't the state be able to reasonably amortize the construction of their buildings? I am vigorously opposed to the amendment offered by Delegate Swanberg.

DELEGATE RYGG: I would like to resist the amendment. In the testimony we heard and in the research we have done, it was pretty well determined that it isn't a very good idea to lock any amount of figures in the constitution. As I stated before in the presentation, there's inflation to worry about, and I really believe that as you have amended section eight now, it has plenty of protection, and I wouldn't want any figures put in there. Thank you.

CHAIRMAN GRAYBILL: The issue arises on Mr. Swanberg's amendment. Do you want to close, Mr. Swanberg?

DELEGATE SWANBERG: I have a few words, Mr. President. I should note first, that the limitation proposed does not, in any way, limit the authority to issue a revenue bond. This talk about bond issues at the university simply does not apply. All of the buildings that I know of at the universities, are financed by revenue. The field house at Missoula is financed out of the revenue expected to be derived from the field house. The dormitories built at Missoula are financed out of the rent-

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als expected to be derived from the dormitories. Those things do not require the vote of the people now, nor would they require the vote of the people if this were passed. All I'm suggesting is when a man's taxes are about to be increased by the construction of a building in excess of a million dollars, I think he should have some control over how that money should be spent. Some control is vested here by a two-thirds majority of the legislature. That's admitted, but I still think that that should apply only to expenditures of a million dollars or less. That gives the legislature, I think, quite a bit of leeway in the construction of the smaller buildings that they might need. But, it still requires, for larger structures of large capital expenditure, major additions to the penitentiary, major additions to the hospital at Worm Springs, and things of that nature, it still requires a vote of the people. Perhaps we'll have to get that Worm Springs enlarged because we may all be going over there before long. (Laughter)

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Swanberg's motion to amend section eight by adding a sentence at the end of it, which is out of the present constitution, and has the effect of limiting the debt at one million dollars unless put to the people for a vote. So many as shall be in favor, vote Aye on the voting machine. So many as opposed, vote No. Have all the delegates voted? Does any delegate

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wish to change his vote? Please take the vote.

Aasheim	- Nay	Champoux	- Nay
Anderson, J.	- Aye	Choate	- Nay
Anderson, O.	- Nay	Conover	- Nay
Arbanas	- Abs	Cross	- Nay
Arness	- Nay	Dahood	- Nay
Aronow	- Aye	Davis	- Abs
Artz	- Nay	Delaney	- Abs
Ask	- Nay	Driscoll	- Nay
Babcock	- Abs	Drum	- Nay
Barnard	- Aye	Eck	- Nay
Bates	- Nay	Erdmann	- Aye
Belcher	- Abs	Eskildsen	- Abs
Berg	- Nay	Etchart	- Aye
Berthelson	- Nay	Felt	- Abs
Blaylock	- Nay	Foster	- Nay
Blend	- Nay	Furlong	- Abs
Bowman	- Nay	Garlington	- Nay
Brazier	- Aye	Graybill	- Nay
Brown	- Nay	Gysler	- Aye
Bugbee	- Nay	Habedank	- Nay
Burkhardt	- Nay	Hanson, R. S.	- Nay
Cain	- Abs	Hanson, R.	- Nay
Campbell	- Abs	Harbaugh	- Nay
Cate	- Nay	Harlow	- Nay

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1	Harper	-	Nay	Payne	-	Nay
2	Harrington	-	Nay	Pemberton	-	Abs
3	Heliker	-	Abs	Rebal	-	Nay
4	Holland	-	Abs	Reichert	-	Nay
5	Jacobsen	-	Nay	Robinson	-	Nay
6	James	-	Nay	Roeder	-	Nay
7	Johnson	-	Aye	Rollins	-	Nay
8	Joyce	-	Nay	Romney	-	Nay
9	Kamhoot	-	Aye	Rygg	-	Nay
10	Kelleher	-	Nay	Scanlin	-	Nay
11	Leuthold	-	Nay	Schiltz	-	Nay
12	Loendorf	-	Nay	Siderius	-	Nay
13	Lorello	-	Abs	Simon	-	Nay
14	Mahoney	-	Aye	Skari	-	Nay
15	Mansfield	-	Aye	Sparks	-	Nay
16	Martin	-	Nay	Speer	-	Nay
17	McCarvel	-	Nay	Studer	-	Aye
18	McDonough	-	Nay	Sullivan	-	Nay
19	McKeon	-	Nay	Swanberg	-	Aye
20	McNeil	-	Aye	Toole	-	Abs
21	Melvin	-	Nay	Van Buskirk	-	Nay
22	Monroe	-	Abs	Vermillion	-	Nay
23	Murray	-	Nay	Wagner	-	Nay
24	Noble	-	Nay	Ward	-	Abs
25	Nutting	-	Aye	Warden	-	Nay

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Wilson - Aye Woodmansey - Nay

CLERK HANSON: Mr. Chairman, sixteen Delegates voting Aye, sixty-seven voting No.

CHAIRMAN GRAYBILL: Members of the Committee, sixty-seven having voted No, and sixteen voting Aye, the amendment fails.

Mr. Ask.

DELEGATE ASK: Mr. Chairman, could you read what Mr. Brown inserted there on the election -- what it says?

CHAIRMAN GRAYBILL: I'll read the section as it is now. Section eight, State Indebtedness: No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the legislative assembly, or unless authorized by a majority of the electors. State debt cannot be created to cover deficits incurred when appropriations exceed anticipated revenue during any budget period.

DELEGATE ASK: Mr. Chairman, would Mr. Brown yield to a question?

CHAIRMAN GRAYBILL: Mr. Brown.

VICE PRESIDENT BROWN: I'll yield.

DELEGATE ASK: Mr. Brown. Was it your intent, by your amendment, that when the question is voted on by the people that the majority of all the electors, like fifty-one percent of all the electors have to vote on it, or just the majority voting?

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VICE PRESIDENT BROWN: Just the majority voting was my intention.

DELEGATE ASK: Would Mr. Brown yield to another question?

VICE PRESIDENT BROWN: I'll yield.

DELEGATE ASK: Don't you think we should add on the words, the majority voting thereon, to fully clarify this that it's the majority voting on the question, not the majority of the electors?

VICE PRESIDENT BROWN: I'd have no objection to that.

DELEGATE ASK: Mr. Chairman. I would move that the words, majority of the electors voting thereon, be added to Mr. Brown's amendment to clearly show that the majority voting, not the majority of all the electors in the state.

CHAIRMAN GRAYBILL: Mr. Ask has made the point that the electors might be larger than those voting and so he suggests adding to Mr. Brown's amendment, or unless authorized by a majority of the electors voting thereon. Is there discussion on that matter?

DELEGATE ASK: Mr. Chairman, maybe I could explain that. The way it was worded, I have a fear that if you had one hundred thousand voters, you'd have to have fifty-one thousand voting for the proposition. The way it is now, if we have a hundred thousand voters and only fifty thousand vote,

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twenty-five thousand and one would carry it.

CHAIRMAN GRAYBILL: The electorate is larger than the voters at an election. All those in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Now, Members of the Committee you have before you for your consideration, section eight as amended, upon the recommendation of the chairman of the Revenue and Finance Committee, that when this committee does arise and report that we recommend the same be adopted. All in favor of section eight as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move the Committee recess until the hour of 1:00 o'clock P.M. this day.

CHAIRMAN GRAYBILL: The motion is to adjourn -- to recess -- until 1:00 o'clock P.M. Before I take that vote, I'd like to point out that we expect to finish Revenue and Finance and we do have Legislative on Style and Drafting this afternoon to finish. All in favor of recessing, say Aye.

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DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered.

(Recess 12:05 o'clock P.M.)

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MONTANA CONSTITUTIONAL CONVENTION

THIRTY-EIGHTH DAY

Saturday, March 4, 1972 Convention Hall

1:12 o'clock, P. M. Helena, Montana

CHAIRMAN GRAYBILL: The Committee will come to order. The Committee will come to order. Mr. Vermillion, will you close the back doors? The Committee will come to order. Ladies and gentlemen, when we recessed the Committee of the Whole, we were about to consider section nine. Will the Clerk please read section nine?

CLERK HANSON: (Reading) Section nine, Balanced Budget: Appropriations by the legislative assembly shall not exceed anticipated revenues during any budget period. (End reading) Mr. Chairman, section nine.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I move that when this committee does rise and report, after having had under consideration section nine of proposal seven, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: This section is similar to section twelve, article twelve, although it does not have the words the present article has. It merely requires the state to operate under a balanced budget inasmuch as it is possible to de-

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termine the anticipated revenue. Most states have a similar requirement and the consensus of the committee was that the state should still try to operate in the black. We feel that it is important enough to ask you to retain it in the present Constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there debate or discussion on section nine?

(No response)

CHAIRMAN GRAYBILL: If not, members of the committee, you have before you on the recommendation of Mr. Rygg that when this committee does arise and report, after having had under consideration section nine, that the same be adopted -- the same be recommended for adoption. All in favor say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: Adopted. Will the Clerk please read section ten?

CLERK HANSON: (Reading) Section ten, Local Government Indebtedness: The legislative assembly shall enact limits of indebtedness for subdivisions and districts of the state. (End reading) Mr. Chairman, section ten.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I move that when this committee does rise and report, after having under discussion section ten of

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proposal seven, that it recommend that the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: This proposed section leaves the question of local government indebtedness and limits the indebtedness up to the legislative assembly. This proposed section would leave the legislature free, if it so desired, to pledge the full faith and credit of local government units to back indebtedness. Such a pledge should result in lower interest rates and a savings to the people of Montana. Now, we know there is an amendment here to retain the old five percent limit, and this was discussed at great length in the committee, and it was the feeling that there, again, we would be locking in a figure in the Constitution which we thought would be undesirable. Whether you have a percentage figure or whether you have a new set of what assessed value is, it seemed to have the same trouble of which you are going to manipulate. Now, we did meet with a group of legislators last Saturday, and I think I mentioned that before, and they did represent the leaders of the senate finance and appropriations committee, and they all agreed that this wording was satisfactory and it should be very adequate as far as they were concerned. We talked to a bond salesman in Minneapolis and he thought it was good. Again, we talked to Mr. Whitney of Dorsey, Marquart, Windsor, West and Halliday. They thought this was good terminology and

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would allow the sale of bonds and present no problem. I don't suppose it makes any difference, but Minnesota has never had a debt limit on local indebtedness, and Illinois repealed theirs in 1970. The committee does feel that this short section will suffice for many years to come. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Mr. Chairman, I move the substitute amendment to section ten. I think you have it on your desk.

CHAIRMAN GRAYBILL: Will the Clerk please read Mr. Ask's amendment?

CLERK HANSON: (Reading) Mr. Chairman, I move to amend section ten, page fourteen, lines ten through fifteen -- lines thirteen through fifteen of the Revenue and Finance majority report to read as follows: Section ten, Local Government Indebtedness: Any local government unit, school district or any other political subdivision may incur indebtedness not to exceed five percent of the assessed value of the taxable property therein. Each local government unit, school district, high school district, or political subdivision shall have separate and independent bonding capacities within the limitations of this section. By a sixty percent vote of the electors voting thereon, the debt limit may be increased an additional five percent of the assessed value. The debt limits in this section shall not apply to obligations primarily payable from revenue or sources other than property taxes whether or not the

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full faith and credit and taxing power of the issuer is also pledged for the payment of the obligation and interest thereon. For purposes of this section, assessed value shall be determined by methods or factors established by law. No indebtedness or liability shall be incurred for any single purpose to an amount exceeding the sum set by law without the approval of a majority of the electors voting on the question as provided by law. Signed, Ask. (End reading)

CHAIRMAN GRAYBILL: Mr. Ask, you also have an amendment to your amendment. Do you want us to explain that?

DELEGATE ASK: Yes, I would like to have that inserted now. After the word, school district, in the second sentence, add community college district. Mr. Champoux requested this and felt it should be added. I had the word, political subdivision, and we may be able to clean up the wording here to include the various districts.

CHAIRMAN GRAYBILL: Very well, Mr. Ask -- I think you all have his language before you -- and he wants to put on the fifth line of his section ten, after the word, school district, a caret, and then the words, community college district. All in favor of that amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: All right, that amendment to Mr.

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Ask's amendment is allowed and Mr. Ask now has an amendment that has the effect of changing local government indebtedness from the formula in section ten to a five percent limitation, not to apply to revenue bonds, et cetera. Do you want to explain it, Mr. Ask?

DELEGATE ASK: Yes. Mr. Chairman, fellow Delegates, this amendment that I have put in is not a spur of the moment thing. I have discussed this with Revenue and Finance for two or three weeks since we've been here, and they've discussed it and have been very fair about it, and we are just different in our philosophy on this particular point, and they knew it was coming up and I think it's a good time to discuss it since we went over state indebtedness quite thoroughly. Now, I submitted this amendment, not because I don't trust the legislature in setting the limit of local government. I do it for the purpose of getting the legislature out of local government to a certain extent. I am on the Local Government Committee and many of the witnesses we heard--legislators and people in local government--complaining that every time they turned around they had to go to the legislature to get some additional mill levy or some type of provision that they can do something in their local government. And even now, the committee -- the Legislative Committee that's working on local government is working real hard to broaden the laws for local government so they can operate more on their own without coming back. Understand that

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a terrific amount of the legislation introduced every year in the legislature is items pertaining to some unit of local government -- give us a little more power here, a little more here, a mill levy here. And, I think on a -- you know, our old Constitution has a five percent limitation and if we adopt the majority report, they're going to -- here's another item they are going to have to go to the legislature for to get additional authority to bond. I don't know what the legislature is going to do, but let me give you an example. Say the legislature says, well, five percent doesn't sound too bad. They're getting along on it now. Let's set it at five percent and let them run like that. All right, say the city of Billings or Great Falls bonds for various things here and they get up about four percent. All right, then they get a project that they're going to have to go over the five percent a little bit, maybe six percent. What do they have to do? Well, the planners will have to say, well, the legislature set it at five percent so we've got to do our planning and go there next time and try to get them to raise it to six or seven percent. And many of you know that have had bond issues on your local level, they get real hectic sometimes. You get a faction on this side and a faction on that side. So, what happens? Here comes both factions to the legislature and says -- one says raise it to seven percent so we can get our -- we can build our -- do our -- finish our project and bond. The other side says, gosh,

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we don't want it. Don't raise it. Don't raise that limit. Now, I don't -- if I were a legislator, I wouldn't feel that I should set the -- decide what Great Falls wants to do or what Billings wants to do. I think that's up to the local people and we're just adding another thing for the legislature to do. Now, I think that my amendment here gives you all the flexibility in the world and this is our form of government. If the people on the local level want to do something, let them vote on it and let them do it. Now, if you read my proposal, it says five percent. Now, some of them said, where did you get the magic figure of five percent? Well, that's our present Constitution and they did have trouble with it years ago when our valuations were lower and they equalized and it came up and as far as I know, I don't know of a local government unit that has trouble bonding to build a new school because the elementary and high school each have separate bonding capacities. So, five percent is a starter. I checked the Revenue and Finance book and I checked counties and of course the counties are way -- they have tremendous capacity left under this five percent, the present provision, if they want to use it. And, I think the only ones that would be close would be school districts, so what have we done to solve this problem? Well, in this proposal you can -- if the local government unit needs it, rather than go to the legislature, they just put on the ballot on this bond of increasing that five percent. The only thing

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about it, they have to have a sixty percent vote. In other words, not of all the electors, but sixty percent majority of the people voting thereon. Now, that's kind of a break because you know, you don't have to be a taxpayer now to vote on bond issues. And this is just a little bit of a break to taxpayers to -- and if the whole community wants it there would, of course, be no problem. But, see the flexibility here? You've gone from five percent that's adequate now, to an additional five percent if the people vote on it in that particular locality. Now, Mr. Rygg mentioned the problem that the legislature might want to pledge the full faith and credit of a local government unit to other types of bonds to get a lower interest rate. Well, I have provided for that in here. The debt limits -- this section shall not apply to obligations primarily payable from revenue or sources other than property whether or not the full faith and credit of the taxing power is also pledged. In other words, the people could vote to pledge their full faith and credit on a revenue bond and this makes for cheaper interest rates. They had trouble previously on what they meant by assessed value under the old section so I have a sentence in there: For purposes of this section, assessed value shall be determined by methods or factors established by law. This is the only way I think you can do it to make some clarification. In other words, the legislature would have to set the methods of assessed value and this is done for the purpose of

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the validity of the bonds, and, of course, someone said that all the legislature has to do is just double the assessed value and you get double bonding. Well, if they do that, that's up to them, but I mean this is something that's -- you have to have it in there for the validity. Now, the last section, or the last paragraph there, it provides no indebtedness or liability shall be incurred for any single purpose to an amount exceeding the sum set by law. Now, I'll stop right there and explain what I mean by that. On the present time the county, you know, is limited to ten thousand dollars of indebtedness and this is rather low. It's rather ridiculous so this amount should be left to the legislature. If they want to buy a Caterpillar or something like that that costs forty or fifty thousand dollars, maybe this limit should be raised. I don't know. But this we leave up to the legislature. But, this shows that you can't have indebtedness set by the legislature without it being put to a vote of the people. I recall once, as county attorney, I had a small school district that wanted to remodel their school building, put in new windows and just remodel it, and I don't remember what it cost but we had to have a bond issue for it, which was rather ridiculous, I think. The bond issue cost a good part of what it cost but the district just didn't have the money. Now, this gives them flexibility so these minor things they don't have the money for they can at least do something. The legislature can provide

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for that. Otherwise, above this sum, all the indebtedness must be approved ay a majority of the electors voting on the question as provided by law. Under this provision all the legislature has to do is set the election methods, which we already have in the statutes, and I therefore feel that this proposal is far more flexible and modern and far-reaching than the majority proposal. At least this is my philosophy. The legislature doesn't have to tinker with it and this local indebtedness is a local problem and with this they can go five percent and an additional five percent. Now, someone has said, what if they need more than ten percent. I don't know. This would be some time in the future and if they ever get to this point, I think it may be better submitted to the people to see whether they want to go higher, or we'd better start looking at other methods of paying for bonds other than property, and I think to the taxpayers of this state who are going to vote on this, I think that this at least gives them some security, some feeling of, well, we have the say in our local community of what we're going to do and we -- they don't have to depend on the legislature. I don't know -- this could work the other way. The legislature may be real conservative some time and say, we're going to limit you to three percent and they won't change it. You might stifle your school districts from building something, or they may get real liberal and say twenty-five percent, fifty percent. This, I submit, gives a real

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flexible program for bonding and all local government units and I think it's real workable. We don't have to fool with the legislature and I think it gets the job done, and I would therefore submit that this particular section should be adopted over the majority proposal. Thank you.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I rise to support this amendment. We had talked it over a little earlier. I, too, talked to Mr. Rygg and various members and we discussed this a good deal. I'm not challenging too much what they have done here but I would like to point out just a few things that this would do if the legislature should decide to raise this debt limit very much. It would dilute the collateral in these school districts by making your debt too high against the collateral, which is the property that's there. This would make it more difficult to sell bonds when you do want to sell them. For the same reason it could very well increase the interest rates that you would pay because when they set these interest rates it's set by how good your collateral is, so if you had too much debt there, why, you'd be paying much more interest rates on the money you did borrow. It could decrease the sale value of your property, your home, any other property you had because if it has a large indebtedness on it, you know the person who is going to buy this is not going to be quite so anxious to. There is room to increase it if anyone got into

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trouble. They could certainly -- sixty percent of the people could increase it. Now, a little bit on the sale of these bonds. I think that Mr. Rygg mentioned that he had talked to different companies, and I know that he did, and I know that's what they told him. But these bonds are sold very competitively, you know, and when you've got the good collateral you get a lot of people in there bidding on them. Just to give you a little illustration, Rosebud county sold some bonds, I think about six hundred thousand dollars worth, last fall and they were able to sell them at four point one six. Now, if anybody can match that they got one awfully good deal because most of the surrounding counties were paying up to six percent. We were able to do that because we do have collateral. We don't have a big debt limit in Rosebud county and I think these are all valid arguments because if you take this lid off, you're not going to be able to sell these bonds at that low rate of interest, and you're not going to be able to sell your property at the price you may want for it, and that's just a few of the reasons. I can think of others, but I won't take any more time, and I support Mr. Ask's amendment. Thank you, Mr. Chairman and Delegates.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, I, too, rise in support of this amendment, with one very minor modification. I think that for a point of clarity, after the word, sixty per-

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cent, the word, affirmative, should be added ahead of vote to clarify the fact that it needs a sixty percent affirmative vote on the issue. Thank you.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Well, I rise in resistance to the substitute motion or amendment, and it isn't so much that I'm scared of debt or debt should be done. I was just thinking as we were talking about this, I just got off a school board when I come up here and we had a budget of over a million dollars of which we could -- we were authorized to do without a vote of anybody and yet we had a debt limit over there of which the interest -- principle and interest only amounted to fifty thousand dollars of that million dollars, or roughly five percent. I think you're overemphasizing debt on this thing and I wish to point out why we want to make it quite broad at this point and why we restrict it and we certainly accepted the amendments on the state debt. There is nobody to limit the state legislature relative to state debt, but for over eighty years the legislature of Montana has never given the state, the counties and local governments very much power in fiscal matters, and we really don't feel it will change very much in the future except as to probably charter powers in the local government issue, and we intend this section to override any powers local governments might get by charter relative to going in debt. But the legislature should set the

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debt limits. One -- and it has to be with the rest of our article. One is, the definition of what is assessed value on property. Now, by the exemptions granted that might change, so your debt limit goes up and down. It could be very well that while this Constitution is in effect that local governments will have other taxing powers and bases besides property. They might have income tax powers. They might have excise taxes and they might want to pledge a certain amount of those revenues to the payment of bonds and I think the legislative assembly should be able to control and set those debt limits. Now, the present constitutional sections relative to this have two or three pages after each section of supreme court interpretations as to what is meant by these sections. They have a number of cases in litigation and that has been costly both to the taxpayer in bond interest rates, in construction of buildings and inflation of the cost of those buildings, and by putting this much verbage again into a debt limitation section you are again inviting a number of law suits relative to whether the issuance of these bonds are legal or in violation of the constitutional limit. By leaving it to the legislature, if a mistake is made in this verbage, they can change it themselves the next time. And, relative to the interest rates, looking at Mr. Ask's section very -- I'm not criticizing it because it's fairly good, but the last sentence relative to what is assessed value, that leaves it to the legislature to

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define what assessed value is on which to base your five percent. Now, the legislature could say the assessed value is forty percent of true value one year for this purpose, not for any other appraisement purpose. They could say twenty years the next year for that purpose and they could go up to eighty percent the year after that for the same purpose and the debt -- defining what assessed value is meant by this section. So, really, the legislature can change this bonding indebtedness as to property taxes as they go along from year to year. So, it doesn't really mean what it says along those lines. Now, as to the last paragraph itself, the legislature has that authority at the present time to set limits as to what they might borrow and over that amount they have to go to the people for a vote. I can think of Mr. Ask's section, we are going to have a law suit right off the bat because under the old limits there were prohibition types of things--no county government shall incur indebtedness, and the supreme court has interpreted that to mean it is not self-executing that the state must still authorize the indebtedness and the state can still set limits even under the old one. He has changed this just a little bit to say that any local governments can incur indebtedness. Well, we get back to the question again--is it self-executing or not? Actually, by enacting our section we do not change any of the present indebtedness limits because they are all enacted by statute now and they are all five percent, as

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you see in these original two articles. So, what it amounts to on his thing is that it sounds good but it really doesn't make too much difference and all it does, the verbage invites law suits and especially where he has stated that by a sixty percent vote, which is more restrictive than the present constitutional limit on water and sewer -- they can go above the five percent now on a majority vote. But then, he also says by -- the debt limits do not apply to obligations of revenue where you give the full faith and credit of the local unit to those things. Well, you're just -- there's a hole that could be very broad. You can issue -- say your debt limit is two million dollars for high school purposes or city purposes but you decide to float a water bond issue and you want a little better rate of interest so you pledge the full faith and credit of the city against that, which means all taxing power of the city against that, and the water bond issue is five million dollars, so there you've raised your limit up to another five million dollars. I think we're much better off and I think we can have confidence in the legislature of this because their past experience has been such that they have been very good and very limiting on the powers of local government to create any debts in Montana and I think we're much better off to leave it to them this time and I don't think they're going to abuse any of that discretion that we give them to them here and if we try to legislate it, we are going to get ourselves

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in trouble again and we're going to have a multitude of lawsuits to decide.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. President, I rise in support of the majority report, against the amendment, because this seems to me this might be an excellent statute that the next session of the legislature could pass in pursuance to the authority now given them by the section ten. But, it may work for years and years and years and be a splendid way of handling -- giving the flexibility that Delegate Ask asks for, but, again, to my mind at any rate, it illustrates the lack of wisdom of trying to write a statute into the Constitution. It may very well be that some situation comes up that is not covered by this statute and so you have to amend the Constitution in order to do it. It seems to me we ought to give the legislature flexibility to write whatever laws they may in the future, to correct mistakes when they do make them, and I'm glad to be still on the same track that I'm opposed to writing statutes into the Constitution. It seems to me that this is, however desirable and however well thought out this particular statute is at this time, that it's impossible to project into the future whether or not it will fit the situations that may arise and I'm willing to leave the legislature some flexibility to write whatever statutes are necessary to meet changing times in the future. I therefore oppose the amendment.

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CHAIRMAN GRAYBILL: Mr. Rollins.

DELEGATE ROLLINS: Mr. Chairman, I'd like to ask Mr. McDonough a question, please.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Yes, sir.

DELEGATE ROLLINS: Mr. McDonough, what would be the effect, aside from heart failure and the end of the world, if I would ask you what would happen if there were no provision in the Constitution concerning the indebtedness for local governments?

DELEGATE McDONOUGH: The legislature could do whatever they wanted to and they could set the debt limits. The only thing we've done here is, we've made it mandatory for them to set some debt limits. If we would eliminate ten altogether, they could still set the debt limits.

DELEGATE ROLLINS: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rollins.

DELEGATE ROLLINS: My good friend, Tom Ask, and I have had many interesting conversations which are more frustrating because the madder I get, the more calm he becomes.

(Laughter)

DELEGATE ROLLINS: All I have been -- ever tried to do with Tom was to get him to give up trying to improve the horse and at least accept the automobile.

(Laughter)

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DELEGATE ROLLINS: Now, it appears to me that he's going back to the same kind of thing with a debt limitation which may be entirely unrealistic. He says there's no magic to five percent. Even North Carolina said eight and seven. I wonder if there's some way -- we've talked in the Local Government Committee consistently about giving the local people more ways to carry out their affairs, but we didn't talk very much about the debt limitation because we left that to the tender mercies of the Taxation and Finance Committee. Maybe Mr. McDonough's last idea that if we would just do away with any mention whatsoever, then maybe the legislature would have amnesia and forget to apply such limits and then perhaps we'd have that happy day when the local people might be able to make a few decisions without having the big brother looking right down the back of their necks.

CHAIRMAN GRAYBILL: Is there any further discussion?

(No response)

CHAIRMAN GRAYBILL: If not, do you want to close, Mr. Ask? Oh, Mr. Kamhoot, do you want to speak?

DELEGATE KAMHOOT: Mr. Chairman, just one short observation. The further we go the more I think we should have trapped the Mitchell Gang while we had them over in their lair. Thank you, Mr. Chairman.

(Laughter)

CHAIRMAN GRAYBILL: Mr. Drum, do you want a rejoinder?

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DELEGATE DRUM: In defense of the Mitchell Gang, Mr. Chairman, I'd like to say that I think the spirit behind this section was that we felt the cities should be given -- the cities and the counties should be given complete authority to run their own business, but don't give them enough authority that they can go broke, and I think the committee feels we have accomplished this in this writing.

CHAIRMAN GRAYBILL: Mr. Ask, do you want to close?

DELEGATE ASK: Yes, Mr. Chairman. Just a few remarks- My good friend, George Rollins, mentioned about the horse and the automobile, and I think that if you take the majority, you are going back to the horse and buggy days. I saw in the paper this morning where we are rated at 1920. I'd put this about 1905 because you're throwing everything back to the legislature again that we've been trying to get away with with local government, and I think if we do anything coming out of this Convention, is having a provision in our Constitution to improve local government so people can run their government the way they want to run it on a local level without keep coming back to Helena, and I submit this section ten here, the way we have it, or the way I have amended it, gives you great, adequate bonding capacity for these local government units, but you leave it up to them. They don't have to come back here again, because I think many of you who have been here before as legislators know the squabbles and hassles they get into whenever

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they want to increase a mill levy for roads or counties and everything you have. Mr. McDonough mentioned that the legislature has been very conservative hanging onto the reins of local government. Well, sure they have. That's what we're trying to correct here today. They're hanging on so tight that they can't do anything and we've given them broad capacity here --five percent and another five percent if they vote on it, and we're going ahead. We're being progressive here. And maybe this isn't the right formula but certainly five percent is greatly adequate right now and if you got another, that's doubling it, and if it ever gets to the point where they need more, I think the people ought to vote on it again on a constitutional amendment. Mr. McDonough mentioned that we have the old section--there was a lot of law suits over it, and I agree there were law suits but I also did quite a lot of work on this particular section and I've handled quite a few bonding matters, and I feel that the wording in this particular section has obviated a lot of the questions that the old constitutional provision had. And, he further said there's a provision in here that they can lend their full faith and credit to other types of revenue bonds and therefore you could have -- you could exceed your bonded indebtedness, but the people have to vote on this and if you can give your full faith and credit -- the state has that power -- if you give your full faith and credit you can get better interest rates, but the local people have

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some control over it. They know what's going on. So, I say we're taking the shackles off local government by this amended section ten and if we go back to the legislature again and you come to our local government article, we'd just as well go back and put the whole cotton-picking thing back in because if you want to shackle them that much, you'd just as well shackle them all the way down the line. Thank you.

CHAIRMAN GRAYBILL: All right, the question is on Mr. Ask's motion that we amend section ten by inserting the language that he has supplied you here in place of the committee's language, and we'll have a roll call vote. You all have this. Does anyone want this read?

(No response)

CHAIRMAN GRAYBILL: I think not. So many as shall be in favor of Mr. Ask's amendment to section ten, please vote Aye on the voting machines, and so many as shall be opposed, vote No. Have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will the Clerk please take the ballot?

Aasheim	-	Absent	Anderson, O.	-	Nay
Anderson, J.	-	Aye	Arbanas	-	Excused

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1	Arness	-	Absent	Davis	-	Aye
2	Aronow	-	Aye	Delaney	-	Absent
3	Artz	-	Nay	Driscoll	-	Nay
4	Ask	-	Aye	Drum	-	Nay
5	Babcock	-	Absent	Eck	-	Aye
6	Barnard	-	Nay	Erdmann	-	Aye
7	Bates	-	Absent	Eskildsen	-	Excused
8	Belcher	-	Excused	Etchart	-	Aye
9	Berg	-	Aye	Felt	-	Excused
10	Berthelson	-	Nay	Foster	-	Nay
11	Blaylock	-	Nay	Furlong	-	Nay
12	Blend	-	Absent	Garlington	-	Aye
13	Bowman	-	Aye	Gysler	-	Aye
14	Brazier	-	Nay	Habedank	-	Aye
15	Brown	-	Nay	Hanson, R. S.	-	Aye
16	Bugbee	-	Aye	Hanson, R.	-	Aye
17	Burkhardt	-	Nay	Harbaugh	-	Nay
18	Cain	-	Aye	Harlow	-	Nay
19	Campbell	-	Absent	Harper	-	Aye
20	Cate	-	Absent	Harrington	-	Absent
21	Champoux	-	Nay	Heliker	-	Nay
22	Choate	-	Aye	Holland	-	Excused
23	Conover	-	Aye	Jacobsen	-	Aye
24	Cross	-	Nay	James	-	Aye
25	Dahood	-	Nay	Johnson	-	Aye

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Joyce	-	Nay	Roeder	-	Nay
Kamhoot	-	Aye	Rollins	-	Nay
Kelleher	-	Nay	Romney	-	Nay
Leuthold	-	Aye	Rygg	-	Nay
Loendorf	-	Nay	Scanlin	-	Nay
Lorello	-	Absent	Schiltz	-	Nay
Mahoney	-	Aye	Siderius	-	Absent
Mansfield	-	Aye	Simon	-	Aye
Martin	-	Aye	Skari	-	Nay
McCarvel	-	Nay	Sparks	-	Absent
McDonough	-	Nay	Speer	-	Nay
McKeon	-	Nay	Studer	-	Aye
McNeil	-	Aye	Sullivan	-	Nay
Melvin	-	Nay	Swanberg	-	Aye
Monroe	-	Nay	Toole	-	Nay
Murray	-	Aye	Van Buskirk	-	Absent
Noble	-	Aye	Vermillion	-	Nay
Nutting	-	Nay	Wagner	-	Nay
Payne	-	Nay	Ward	-	Nay
Pemberton	-	Absent	Warden	-	Absent
Rebal	-	Nay	Wilson	-	Aye
Reichert	-	Nay	Woodmansey	-	Nay
Robinson	-	Nay	Chairman Graybill	-	Nay

CLERK HANSON: Mr. Chairman, thirty-four Delegates voting Aye, forty-six voting No.

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CHAIRMAN GRAYBILL: Forty-six Delegates voting No and thirty-four voting Aye, the amendment fails. We are back considering section ten, as submitted by the majority report. The legislative assembly shall enact limits of indebtedness for subdivisions and districts of the state. Is there other debate?

(No response)

CHAIRMAN GRAYBILL: Members of the committee, you have before you, on the recommendation of Mr. Rygg, chairman of the Revenue and Finance Committee, that when this committee does rise and report, after having had under consideration section ten, that it recommend the same be adopted. So many as shall be in favor of that motion say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Section ten is adopted. Will the Clerk please read section eleven.

CLERK HANSON: (Reading) Section eleven, Use of Loan Proceeds: All money borrowed by or on behalf of the state, or any subdivision or district of the state, shall be used only for the purpose or purposes specified in the law authorizing the loan. (End reading) Mr. Chairman, section eleven.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I move that when this committee does arise and report, after having had under con-

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sideration section eleven of Revenue and Finance Proposal Seven, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: This section is practically identical to section three of article thirteen. It attempts to guarantee proper management of borrowed funds and should prevent misuses or diversion of that money. We believe it is an important enough matter to be retained in the new Constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there any discussion?

(No response)

CHAIRMAN GRAYBILL: If not, members of the committee, you have before you for your consideration and upon the recommendation of the chairman of the Revenue and Finance Committee that when this committee does arise and report, after having under consideration section eleven, that it recommend the same be adopted. So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: So ordered. Will the Clerk please read section twelve?

CLERK HANSON: (Reading) Section twelve, Strict Accountability: The legislative assembly shall enact the nec-

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essary laws to insure strict accountability of all revenues received and money spent by the state, subdivisions and districts thereof. (End reading) Mr. Chairman, section twelve.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration section twelve of Revenue and Finance Proposal Seven, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: This section is broad in scope but it covers the same ground as the detailed sections of thirteen and fourteen of the present Constitution. It also conveys the intent of specific appropriations covered in section ten of article twelve. Now, if this section that we have wasn't covered specifically enough, we feel that the new section that was adopted the other evening -- I think it was section eighteen, which was added to the legislative article -- I think it was proposed by Mr. Mahoney and I think it was the old section thirty-four, article five. So, with that in the legislative, plus this, I think we have -- we're covered very well. And, we think there must be an increased accountability of all revenues of the state and the legislature must necessarily set up the machinery and the details of accounting procedure. They can do all that. We do feel it is imperative that the legis-

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lature establish a unified accounting system for all governmental units throughout the state, but because this is not of a constitutional nature, we will have that report to the legislative council. As near as we can tell, the present constitutional requirements on deposits, cash flow, are not adhered to as they were supposed to. We feel this is a necessary part of the Constitution and we would ask that you retain it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: Mr. President, will Mr. Rygg yield to a question?

CHAIRMAN GRAYBILL: Mr. Rygg, will you yield?

DELEGATE RYGG: Yes, I'll try.

DELEGATE CONOVER: In there, where you say, to insure strict accountability of all revenues received and spent by the state legislative -- would this apply to the legislative audit that's been set up by the last legislature -- the machinery that they already have?

DELEGATE RYGG: Yes, I think they would be a part of it, yes.

CHAIRMAN GRAYBILL: Is there other comment?

(No response)

CHAIRMAN GRAYBILL: Very well, members of the committee, you have before you for your consideration on the motion of Mr. Rygg that when this committee does arise and report,

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after having had under consideration section twelve of the Revenue and Finance proposal, that it recommend the same be adopted. So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: The Ayes have it and it is adopted. Will the Clerk read section thirteen?

CLERK HANSON: (Reading) Section thirteen, Investment of Public Funds: The legislative assembly shall provide for a unified investment program for public funds and prescribe the rules and regulations therefor, including the supervision of investment of surplus funds of all subdivisions and districts of the state. The separate existence and identity of each and every fund involved as a part of the unified investment program shall be strictly maintained. An audit of the investment program shall be conducted at least annually and submitted to the governor, legislative assembly and chief justice of the supreme court. (End reading) Mr. Chairman, section thirteen.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I move that when this committee does arise and report, after having had under con-

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sideration section thirteen of Revenue and Finance Proposal Seven, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: This proposed section on investments replaces all of article twenty-one in the present Constitution. Most of the provisions in that article are obsolete. In fact, if the public school fund had not been added to the Montana trust and legacy fund in 1938, the article would have no effect whatever. The proposed section stresses the importance of a unified investment program for all public funds. Such a program has been sought in Montana since 1924, and has only recently been accomplished through executive reorganization. The committee feels the importance of unity, professional treatment and supervision of public fund investments should be stressed at the constitutional level. Because public money is such an important trust for the people of Montana, the investment program should be audited at least annually. The sentence on separate identity of funds in the public fund investment program was added to insure proper distribution of interest to the individual funds. Although public funds should be invested as a unit to insure a larger return, the interest from that unified program should be distributed on a pro rata basis, depending on the size of the individual funds. The separate fund sentence should insure that distribution. The regulation

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and limitation of the investment program, and the administrative structure of the investment program is left up to the legislative assembly. At least two restrictions on the investment program will remain in force in the Constitution. Those provisions in article eleven and the enabling act deal with the land grant money. The legislature is best equipped to make decisions concerning investment opportunities for state money. The obsolete nature of article twenty-one illustrates the futility of trying to prescribe an investment program and investment details at the constitutional level. The scope of the legislature's supervision should also include surplus funds at the local level. Although the legislature may well leave the handling and investment of such funds in the hands of local governments, its supervisory powers will insure their careful handling and treatment. We feel that this is the better of the proposals. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman, I move to amend section thirteen by adding the following language on line four of page fifteen, after the word, court: With the exception of monies contributed by individuals to retirement funds, no public funds shall be invested in private corporate capital stock. This, in effect, then, is minority proposal number two, which you will find on page thirty-six. In the original typing, one vital provision was inadvertently left out and sheets have been

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passed out showing that the language on page thirty-six, line twelve, should have inserted after the word, maintain, the following sentence: An audit of the investment program shall be conducted at least annually and submitted to the governor, the legislative assembly and chief justice of the supreme court. In effect, then, all the minority is attempting to do is add the one sentence stating that with the exception of monies contributed by individuals to retirement funds, no public funds shall be invested in private corporate capital stock.

CHAIRMAN GRAYBILL: Now, Mr. Artz, you have lost the Chair. I don't know about the rest of them. I understand that you have an amendment and I understand that it's -- is it the minority -- is it the language on page thirty-six?

DELEGATE ARTZ: After you insert the following sentence after the word, maintained, on line twelve --

CHAIRMAN GRAYBILL: All right, well, you've got to go slow so we can write that down then.

DELEGATE ARTZ: They had the sheets passed out, Mr. Chairman.

CHAIRMAN GRAYBILL: Well, is that the sheet signed by Mr. Swanberg?

DELEGATE ARTZ: No. That's the one that says, additions required to Revenue and Finance Committee proposal on constitutional revision number seven.

CHAIRMAN GRAYBILL: Well, the Chair does not have a

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copy thereof.

DELEGATE ARTZ: The wording is the same --

CHAIRMAN GRAYBILL: Just a minute. Let's -- just a minute. Let's get me a copy of it--somebody. Are there copies on everybody's desk? There should be one on my desk back there then. When you instruct Pages to pass things out, it's helpful if you include the Clerk and the Chair.

DELEGATES: (Signified they do not have copies.)

CHAIRMAN GRAYBILL: Oh, nobody has it? Mr. Artz, is it passed out in the body?

DELEGATE ARTZ: Mr. Chairman, it was left with the Chief Clerk and I was told that it would be passed out. As far as I know, everybody has it.

CHAIRMAN GRAYBILL: Now I see it, Mr. Artz. It's a sheet of paper with the first two or three inches only typed on, in case you're looking on your desk for it. Now, Mr. Artz, do I understand that you want to replace -- do you want all of this other language from line six to fifteen on page thirty-six, and should that replace section thirteen?

DELEGATE ARTZ: With the addition, Mr. Chairman, of the following words, after maintained, which are on page twenty-nine, lines eighteen, nineteen and twenty. All the minority is attempting to do is add one sentence to the majority report.

CHAIRMAN GRAYBILL: And the one sentence is the -- an audit of the investment program shall be conducted at least

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annually?

DELEGATE ARTZ: No, that's the one that has to go in the minority. The one we are adding to the majority is the words on lines twelve, thirteen, fourteen and fifteen on page thirty-six, which start with: With the exception of monies.

CHAIRMAN GRAYBILL: All right, your amendment consists then of adding the phrase at the end of section thirteen: With the exception of monies contributed by individuals to retirement funds, no public funds shall be invested in private corporate capital stock. Is that right?

DELEGATE ARTZ: That is correct, Mr. Chairman.

CHAIRMAN GRAYBILL: And then, where do we add the words, an audit of the investment program shall be conducted --

DELEGATE ARTZ: Mr. Chairman, the words: An audit of the investment program -- were included in the original wording of the majority, and if we're going to make the minority it would be on page thirty-six, line twelve, after the word, maintained, and before the word, with.

CHAIRMAN GRAYBILL: I see. Mr. Artz, would it be fair to say on page fifteen, which is the minority -- which is the majority report, that we could add your sentence: With the exception of monies contributed by individuals to retirement funds, no public funds shall be invested in private corporate capital stock -- if we added that on line one of page fifteen, after the word, maintained, then we would have your

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amendment correct?

DELEGATE ARTZ: That's correct.

CHAIRMAN GRAYBILL: That's right?

DELEGATE ARTZ: Come after the word -- main thing is to get that one sentence in there, Mr. Chairman.

CHAIRMAN GRAYBILL: All right, let's have it the sense of Mr. Artz's amendment that on page fifteen, line one, after the words, program shall be strictly maintained, we add a sentence, and the sentence is found on lines twelve through fifteen on page thirty-six, and the sentence refers to not investing in private corporate capital stock.

Mr. Artz.

DELEGATE ARTZ: Thank you, Mr. Chairman. The basic fundamentals of the minority report are quite simple. We maintain that the criteria for investment of public funds is different than investing personal or private funds. We say that the priorities should be in the following order. Number one, security; number two, that the funds should be invested in Montana as much as possible; and that the final consideration is the return on the investment. We had a lot of testimony which worried me, as Mr. Mahoney says. The emphasis was on return on investment rather than security. I think a good example is a statement made by one of the committee members right here on this floor when we were having our first Romney hearing, and I quote: You don't find the big red apple next to

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the trunk of the tree. You find them near the end of the limb. I don't know how many of you have climbed out to the end of that limb and found that the big red apples dropped to the ground and you went after them. I have. Now, it's all right for me to lose my own money, but I don't think we should let the legislature have the power to lose the public fund. We are violently opposed to gambling with state funds and taking a chance that this limb might break, and any time you put money into private corporate capital stock, you are gambling because you are down at the very bottom of the balance sheet. You have no security except the earning power of that corporation. There is no assets to back it up unless they're left over after you have taken care of bonded indebtedness and all of the other liabilities. Common stock is the last item. We were told by testimony that the stock market would act as an offset to inflation. It could be, but we also offer, quoting from an advertisement in the Great Falls Tribune by one of the local banks, that money invested at five and three-quarters percent for twelve years will double. We think that's adequate safeguards against inflation. By the fact that the majority committee report leaves this up to the legislature, I think you can see there were pressures exerted on the committee to permit the legislature to invest our public monies in the stock market. Now, if the committee was pressured, I'm sure that same pressure would be applied on the legislators in the future, and I

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1 think personally we've dumped enough things in the legislators'
2 laps. I think we should give them a little barricade to hide
3 behind, at least in one instance. Our last point--when you buy
4 common stock in a corporation you, in effect, own part or all
5 of that corporation, depending on how much stock you buy. Now,
6 let's say we're going to follow rule number two--keep the money
7 in Montana. The only way we can do that then is to buy in Mon-
8 tana corporations, and we've had some good development corpor-
9 ations come around, and they've had some real good salesmen to
10 sell the stock. That's their job. So, they sold the control-
11 ling interest in one of these development corporations. Every-
12 body would say, that's fine--we're helping Montana--but who is
13 going to vote that stock? Now, we get into another issue.
14 Let's say that this particular corporation puts out some of
15 those obnoxious fumes that we've heard about over in Missoula,
16 and which I have smelled, and the corporation comes around and
17 says, now here, listen here, fellows, we cannot go ahead and
18 put in all of this necessary equipment to keep those fumes down
19 and if we do, you're not going to get any return on your in-
20 vestment. What position would that put the legislature in?
21 Now, the Pages have been sending these little books around and
22 they've been getting your autographs on them. I've been around
23 with my little book, too, and I didn't put autographs down, I
24 put X's and I have fifty-three X's of people that said they
25 felt sympathetic towards my ideas. With that, I close. Thank

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you.

(Laughter)

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. President, I would like to make an amendment. I move to delete: and chief justice of the supreme court.

CHAIRMAN GRAYBILL: What line?

DELEGATE BROWN: Well, there's no line to it because it was omitted, but it was read into -- to the amendment.

CHAIRMAN GRAYBILL: That's line four on page fifteen?

DELEGATE BROWN: You're correct. That's right.

CHAIRMAN GRAYBILL: You move to delete, and chief justice of the supreme court?

DELEGATE BROWN: Yes, sir. Then we'd need an and between governor and legislative assembly.

CHAIRMAN GRAYBILL: The Chair is thinking, Mr. Brown. You are assuming that Mr. Artz's amendment includes that last language there, which is part of the majority report.

DELEGATE BROWN: I'll make the same motion on the majority if the minority fails.

CHAIRMAN GRAYBILL: Wouldn't it be better to get the other one out of the way?

DELEGATE BROWN: Yes, we could do that.

CHAIRMAN GRAYBILL: One problem I have is, you're stacked up behind two other amendments to this section and if

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I let you in here, we may be debating something we don't need to debate.

DELEGATE BROWN: I'll withdraw it until the time proper.

CHAIRMAN GRAYBILL: Will you hold it for a while?

DELEGATE BROWN: You bet.

CHAIRMAN GRAYBILL: All right, the issue is on Mr. Artz's motion to add this sentence found on page thirty-six: With the exception of monies contributed by individuals to the retirement funds, no public funds shall be invested in private corporate capital stock.

Mr. Berg.

DELEGATE BERG: Will Mr. Artz yield to a question?

CHAIRMAN GRAYBILL: Mr. Artz, will you yield?

DELEGATE ARTZ: I yield.

DELEGATE BERG: Mr. Artz, I'm concerned primarily with the words, with the exception of monies contributed by individuals to retirement funds. Now, for example, in the police court or in the police retirement fund, or in the firemen's retirement fund, individually policemen and firemen monthly contribute towards a retirement fund. Likewise, municipal or city funds are put with that. Are you going to require the city or whatever investment organization is that takes care of these funds to keep a separate accounting of the investments of those funds, distinguishing between what individuals con-

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tribute as compared to what the municipality does?

DELEGATE ARTZ: Mr. Chairman, the funds -- the retirement funds that I have been acquainted with, the amounts contributed by individuals are being kept track of, and I maintain that those are individual funds and that those people should have the right to have that money invested as they would like. I would not like to restrict you or myself on what we do with our own money, but the part the state puts up, I want it restricted. Does that answer the question?

DELEGATE BERG: Not entirely, because the ones that I am familiar with--those that relate to police or fire funds--are not kept separate. They are invested together and I think the same is true with the public employees retirement system. Individuals contribute to it, so do the municipality or the state, but the funds are all invested alike.

DELEGATE ARTZ: I cannot see that in this computer age that would cause any problems.

DELEGATE BERG: I just wanted to call it to your attention.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKE ON: I rise in support of Mr. Artz's minority proposal. He's stolen my thunder. There's not much left to say. I would, in addition, say we are concerned, when we talk about priorities, we are concerned more with the security of the investment rather than the speculativeness. He

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made the comment that these monies invested at five and three-quarters percent will double in twelve years. I think that that is a sufficient rate of return. I also see a problem in the voting of capital stock, voting state monies in capital stock, and he mentioned the situation where the firm would be spewing out pollution. The state would then be in conflict whether or not to perhaps vote for pollution controls and lose money, or vice versa, so I think we create problems. We also create the creeping problem of socialism and I must tell everyone here, I am extremely opposed to socialism. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Would Mr. Ask rise -- oh, I have a comment to make about his amendment, if I may. I am in complete sympathy with Mr. Ask's --

CHAIRMAN GRAYBILL: Mr. Artz, you mean?

DELEGATE CHAMPOUX: Excuse me -- in his philosophy, especially in terms of the safeguarding of the public school funds. However, there is a problem here and I wonder if you had thought about it, Mr. Artz. For instance, the Montana University -- the University of Montana has certain endowment funds like, as an example, the Dixon fund. Now, most of that is presently invested in Anaconda stock. Now, if we pass this, it seems to me that what will happen then is that the university fund would then be forced to sell this Anaconda stock and

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thus convert it into these other safely secured investments. Would you comment on that, sir, please?

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman, as I understand that, it was discussed in committee and I believe those are private foundations that are not subject to the control of the state of Montana. Am I not correct? You might refer that to Mr. McDonough. I'm sure that was --

CHAIRMAN GRAYBILL: Mr. McDonough isn't here so we can't refer it to him. You have the floor, Mr. Champoux.

DELEGATE CHAMPOUX: To my knowledge, I'm not -- to my knowledge, they aren't and I wish we could clear that up.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: I believe I am correct in saying that Mr. Artz is correct that the endowment foundation of the University of Montana is not subject to this regulation now and can invest as it pleases. It's an entirely separate organization, distinct from any state agency or body.

CHAIRMAN GRAYBILL: Mr. Swanberg, do you want to make your amendment now to Mr. Artz's proposal?

DELEGATE SWANBERG: Thank you, Mr. President. I think that Mr. Artz and myself are in basic agreement. It's just a matter of language, and I would submit at this time the following sentence to be added at the end of section thirteen of the majority report. I will read it. Disregard all that

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other stuff up at the top: Investment of all public funds shall be limited to public securities within the state, including school districts, county and municipal bonds, and bonds of the state of Montana; but it also may be partly invested with bonds of the United States, bonds fully guaranteed by the United States as to principal and interest, federal land bank bonds, and private corporate bonds of investment quality. All investments shall be limited to safe loan investments bearing a fixed rate of interest. Now, this is the --

CHAIRMAN GRAYBILL: Mr. Swanberg, just a minute. Let me state your amendment. The Chair is going to allow Mr. Swanberg's substitute amendment. It is my understanding that you intend to substitute this paragraph in place of the one Mr. Artz proposed. Is that correct?

DELEGATE SWANBERG: That is correct.

CHAIRMAN GRAYBILL: All right, so the situation is that Mr. Artz proposed this line that -- this sentence that limited investments in private corporate capital stock, and Mr. Swanberg has now proposed his language in place of Mr. Artz's language. Now, you all have Mr. Swanberg's before you on your desks. It just doesn't say section thirteen on it. Very well, Mr. Swanberg --

DELEGATE SWANBERG: Yes.

CHAIRMAN GRAYBILL: -- you have read your amendment and I will allow it. Go ahead.

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DELEGATE SWANBERG: The reason for this amendment, ladies and gentlemen, is to protect the legislature from itself. We all know that there are times when people as a body go a little bit crazy when it comes to speculation and investment. I wasn't too old at the time but I do have some dim recollection of 1929 and I've read a number of books on it, and that's one good example. Just prior to that time was the Florida land boom. Many fortunes were lost there. Here in Montana we are on the verge of a Montana land boom and I don't think any of us want our investment funds put into those kind of investments. Back around 1620, if I can go back that far, the people of Holland went crazy and they began to invest in tulip bulbs, of all things, and tulip bulbs all of a sudden commanded tremendously high prices in the markets of Holland. Wealthy people took their fortunes, went out and bought these tulip bulbs and began to trade them back and forth, and common sense in Holland went out the window, and one fine day, somebody asked himself -- this handful of tulip bulbs which he had purchased for a fortune -- he looked at them and thought, I wonder if they will grow and he took them out and planted them and the whole process -- he began to think about it, and apparently everybody else was thinking about it at the same time, and the result was financial disaster in Holland. A couple of hundred years later in France, we had the amazing Mississippi bubble in the life of John Law, and this gentleman had devised a financial scheme

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whereby land over in Louisiana, in the Louisiana area, would be used to somehow finance the monetary system of France. His plan was totally unworkable but the people of France went for it because it just meant that they kept trading dollars up and up and up like we are now doing with inflation, and this broke France. I'd hate to think what might have happened in the state of Montana if we had not had this provision in our Constitution back in the '20's. I would venture to state that every legislator who came over here would have just itched to get at two hundred million dollars to put in the stock market. I think the desire to do this would have been overwhelming and the arguments which we hear now would have been the same then. Prices are going up; they'll never come down. Well, let me tell you something. We haven't had any great amount of crash the last few years, but if you'll compare the price of Montana Power stock today with what it was in 1963, you'll find that it's lower today. If you compare the price of the Anaconda Company stock in 1963 with what it is today, you'll find that it is lower. And, if you'll compare the price of practically any utility stock--I don't care which one it is--of 1963 with what it is today, you'll find that it is lower. Now, these are the kind of stocks that a prudent person in the stock market would invest in, managing a pension fund or some kind of a trust fund. Railroad stocks are another. Back twenty years ago, anyone would have said, why, railroad stock is absolutely

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safe. Let's buy it. Today, we know the story is different. I think there should be something in here to protect the legislature from itself in this way. Now, the only question is how to do it. Mr. Rygg has been conferring with the Dorsey law firm on language, and I have been conferring with the bond firm of Dain, Kalman and Quail and Mr. Stan Aby on this problem. Many of you here, I think, know Stan Aby--a very colorful man in the investment world--and I think he's had a hand in practically every revenue bond problem that Montana has ever had. But, anyhow, he suggested that if we wanted something in the Constitution, and he thought it was a good idea that we should take the present Constitution as is and add the following phrase, and I have it in my amendment. The phrase is: and private corporate bonds of investment quality. Now, that phrase--corporate bonds of investment quality--has a strict legal meaning that has been construed many times by the courts and that's why he suggested it. It rules out the speculative bond and, believe me, they exist. There are bonds floating around now that are far more speculative than many of your stocks, commanding extremely high rates of interest, but no one who is managing a fund of this manner could safely invest in them. I would submit then that something like this should be in this Constitution. I guess that's it. Thank you.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Again, Mr. Swanberg, I am in com-

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plete sympathy with your philosophies, sir, especially where the public school funds are concerned. However, I have a few questions for you, if I may. One of them is -- may I, Mr. Chairman?

CHAIRMAN GRAYBILL: You may ask a series of questions of Mr. Swanberg.

DELEGATE CHAMPOUX: From our studies in the Education Committee, we found out that the -- not all federal land bank bonds are fully guaranteed by the government. Did you know that, sir?

DELEGATE SWANBERG: I'm sorry. No, I don't know.

DELEGATE CHAMPOUX: All right, you can check this with the investment people in the --

DELEGATE SWANBERG: I just took the old Constitution, Mr. Champoux, and added that one phrase. If you think the federal land bank bonds should come out, let's take it out.

DELEGATE CHAMPOUX: This has happened since the old Constitution. In the past they have been fully guaranteed; however, at this time they aren't. And, just for the record now, when we talk about private corporate bonds of investment quality, are we talking about triple A or above? Is that your --

DELEGATE SWANBERG: Here, again, I'm not sure what the A rating is, whether it's triple A or double A, but I know that this is the language that is very frequently used in

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statutes setting these things up.

DELEGATE CHAMPOUX: The only thing I was concerned about, sir, was the investment quality phraseology. You're convinced that this is -- all right, when we talk about safe loan investments, to your way of thinking does this last section here, a fixed rate of interest, indicate what you mean then by a safe loan investment? Is that the protection there?

DELEGATE SWANBERG: Again, that's the provision of the present Constitution and I see no real reason to change it.

DELEGATE CHAMPOUX: All right, with the exception, then, of the federal land bank bonds, I would support this.

CHAIRMAN GRAYBILL: All right, before we go on the Chair would like to tell everybody that we now have Mr. Artz's amendment and Mr. Swanberg's substitute amendment. Mr. Barnard has an amendment to add to subsection two, which deals with the public school funds only, and Mr. Davis has an amendment which could be added, but it seems to me that we will have to settle on what we're going to do with Mr. Swanberg's and/or Mr. Artz's before we can add any more unless there's a specific amendment to Mr. Swanberg's language. Very well, let's discuss it.

Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I'd just like to ask a question for clarification. Really, frankly, I don't

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know a stock from a bond because I don't own either, but several months ago I read an article in the Wall Street Journal about the state of Ohio, and I believe in that state they could invest in private -- I don't know whether it was stocks or bonds. I wonder if perhaps someone here -- Mr. Swanberg, could you clarify that situation in Ohio for me I read in the Wall Street Journal a few months ago, or a year or so ago, about their investment program? Did they invest in stocks or bonds? I mean, I'm confused because in the minority proposal the sentence is private corporate capital stock, and in yours you say private corporate bonds of investment quality may be invested in. I just don't know the difference.

DELEGATE SWANBERG: Well, there's a gap in between. Mr. Artz's deals -- forbids the investment in stock, and mine states that the investment will have to be bonds of corporate grade. Now, in between that you have other kinds of securities. You have debentures that are unsecured, for instance, and things of that nature. Here, under Artz's proposal, as I construe it, there could be investments in real estate and I seriously question that. Does that answer your question?

DELEGATE REICHERT: (Inaudible. Microphone not turned on) -- don't know what happened in Ohio. All I know is they had a bad program there and it was in private investments of stock, I believe.

CHAIRMAN GRAYBILL: Mr. Romney.

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DELEGATE ROMNEY: Mr. Chairman, I am in sympathy with both of these amendments if they can be worked out, and I also wish to make a few remarks about this matter. I noticed in the rationale of the majority on page thirty a statement is made-- the obsolete nature of article twenty-one illustrates the futility of trying to prescribe an investment program and investment details at the constitutional level. That may be true but I have some data here that is very impressive on this matter. I think that the trust and legacy fund as used in the state of Montana in recent years has been a spectacular success. I hold in my hand data concerning the common school permanent account in the trust and legacy fund set up under the present article twenty-one. Now, of course, this is not just a -- this is just pertaining to the common school permanent fund and not to the other funds in the trust and legacy fund, of which there are quite a few, but the principal one is the common school fund and the fact that it would represent, well, almost all of it. A few million dollars are in the other funds, of which there was some reference made here before. So, I'm addressing myself here only to the common school permanent account. It represents not only interest on the fund but other accretions such as sale of public lands that the state secured from the United States, oil royalties, lease income and other material like that, all flowing into this one fund and invested. Now, of course, we are going to face this situation again in the edu-

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cation article where a portion of the enabling act and the section twenty-one is laid out in one of the sections in the education document which we will be discussing here in a few days. And, in the meantime, I want to tell you how much money has been built up by this obsolete system. The amount in the permanent common school account as of June 30, 1954, was twenty-seven million -- wait a minute, I want to get in the right -- twenty-seven million, one hundred and seventy-seven thousand, eight eighty-four, forty-three. Additions that year were one million eight hundred and fifty-three thousand, one hundred and eleven thirty-four. In 1955, at the end of the fiscal year, twenty-nine million. I'm just going to read in millions, with accretions that year of one million six hundred and thirty thousand. June 30, 1956, thirty million six hundred and sixty-one thousand; accretions one million five hundred seventy-six thousand. June 30, 1957, thirty two million; increase, one million five hundred and thirty-five. June 30, 1958, thirty-three million seven seventy-two -- and so on and so forth until we get to -- and each year, fellow Delegates, the amount showed an increase in every instance. On the June 30, 1971, the total was fifty-four million, eight hundred and thirty-nine thousand, five hundred and four dollars, which was invested to the credit of the common school fund of the state of Montana. That is an accretion from 1954 to 1971, seventeen years of that, from twenty-seven million to fifty-four million which is

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-- and a little bit more -- which is a little bit better than a hundred percent in seventeen years. Now, I don't think that is a bad job at all. I think it's a good job. I grant that if they had had that much money in 1933 and invested it in Anaconda stock when it was worth three dollars and would cash it in today, they would have probably done a great deal better. If they had had it in Montana life insurance in 1910, their hundred dollars would have been worth more than five thousand dollars now, and you could blow that up along the same line. Now, that is the story of this fund and I submit that instead of being a poor job it has been a splendid job and if we can do as well in the future and if we turn it over to the legislature and they do as well or better, why, Montana will be in a fine situation. However, I want to be sure that we don't lose anything. I'm not so concerned about gaining as I am keeping what we have and gradually going up. I trust that I am a prudent man as far as finances are concerned and that's probably why my finances are in the state they are.

(Laughter)

DELEGATE ROMNEY: However, there are other things to consider in this matter and that is, it isn't just the interest we are going to gain by investing this money in, whether in government bonds or stocks or whatever it might be. I am told that recently one of the divisions of the state government invested several million dollars in United States shipping board

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stock -- bonds, and they are going to get over eight percent interest in it and it's guaranteed. Well, if you can get -- if you can invest this money that's in these funds and in the other funds, as well as the common school fund -- if you can invest that money in federal guaranteed bonds, such as the United States shipping board bonds at better than eight percent interest, you can't do much better than that. But there is also another way that we are raising money for this fund and that is through the coal mining down in eastern Montana which Mrs. Cross is so interested in. In the Deckter area the state school -- the state of Montana has a number of school sections and upon one of them the Deckter Mining Company is now engaged in mining coal. This single section of coal land is estimated under the contracts which the state has entered into with the company to produce fifty-five million tons of coal in the next nine years for which the state of Montana gets a royalty of seventeen and a half cents a ton. That means that we are going to gain in excess -- at least a million dollars a year and probably nine million dollars anticipated in eight years, which this will be carried out. That means that ten years from now, not taking into account the gradual growth, we are going to have around eight or nine million dollars more in this common school fund. Somebody said in my hearing that these one hundred million and five hundred million dollar amounts that were laid out in the section twenty-one, the trust and legacy fund,

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were jokes. They didn't amount to anything. Nothing could be farther from the truth with respect to the common school fund which is one of the -- which is the five hundred dollar -- the five hundred million dollar fund. The time is going to come very shortly, probably even in my lifetime, when this fund is going to reach a hundred million dollars, and this republic is not too old. We're just now celebrating the one hundredth anniversary of Yellowstone Park. It's plain that at the rate of growth of money, which due to inflation makes it less valuable, we are going to have the day when we will have -- if we keep this we will have five hundred million dollars in this fund, and if we even have a hundred million dollars in this fund and it's drawing even four or five percent interest, it's going to be a very healthy thing for the state of Montana and that is why we must scrupulously guard this inheritance which is growing and growing and growing. I support the minority.

CHAIRMAN GRAYBILL: Very well, members of the body, we have before us section thirteen on investment of public funds, as proposed by the majority, and we have to that Mr. Artz's amendment to add a sentence that limits investment in public corporate capital stock and we have a substitute motion -- a substitute amendment by Mr. Swanberg to allow investment in bonds and certain other bonds which are fully guaranteed. So, we are now debating Mr. Swanberg's substitute amendment. Is there further discussion?

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Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I rise in opposition to the substitute amendment and in support of the majority proposal. I will confine my remarks principally to the effects of this upon the funds invested by the state of Montana for the benefit of public employees -- that is, retirement funds. I am not familiar with the problems of the investment of the public school funds, and they may have problems which would dictate somewhat of a different approach. I am appalled by the lack of confidence expressed on this floor, not only in the legislature of Montana -- I'm not so terribly appalled by that since I have expressed some lack of confidence in it myself from time to time -- but also by the lack of confidence expressed by this conservative body in the economy of this country, which is essentially what you are saying. Mr. Swanberg speaks of the debacle at the end of the 1920's. I see a headline in the Billings Gazette this morning that says we are writing a constitution for the 1920's. Maybe that's exactly what we do have in mind. As an economist, I give you no guarantees, but I think it's highly unlikely that we are going to have to worry about the great crash again. The economy of the United States has changed a great deal in the last forty years and we will have our ups and downs in the stock market, but the tulip bubble and the great crash of 1929 I think are not something we need to worry about in writing a Constitution for the future, at least

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the foreseeable future. Now, the minority spokesman, Delegate Artz, speaks of his priorities and he puts security at the head of his priorities. I ask you, just how secure is an investment in a fixed dollar security which is depreciating real value at the rate of five or six percent a year, which it has been doing regularly for the last several years? Mr. Romney speaks with glowing pride of the growth in whatever fund you were talking about of a hundred percent in seventeen years. In those same seventeen years, the price level has raised sufficiently that the real value of that fund he speaks of has remained just about constant. Now, it is a fact, I think -- although I haven't checked this -- that practically every retirement fund -- private retirement fund does permit and does, in fact, invest part of its money at least in corporate stocks, and the restriction that has been imposed upon the investment of retirement funds for the benefit of employees of the state of Montana in the past has, in effect, robbed them of a considerable part of their potential retirement return. I am a member of a private retirement fund to which I contribute in addition to my contributions to the state of Montana's retirement fund in which it is possible to vary the amount, the percentage of my contribution as between fixed return -- that is, bonds and securities -- and stocks -- on what is called a variable annuity basis, from zero to a hundred percent in either direction, and I've examined very carefully the results of this fund

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since it was established in the early 1950's, and with the exception of the last three years or so, one would do considerably better in such a stock fund than in a purely bond fund of the sort which is contemplated here. I would say to you that we are not talking about the legislative assembly, or the legislature, as the Style and Drafting Committee prefers to call it, investing the public funds of Montana. We are talking about them, as the language of the majority says, providing for a unified investment program and I think they should be allowed to provide for that. We are not -- we do not have the picture before us of the legislature sitting down and actually doing this investment itself. It will turn the job over to experts and it seems to me that this is the way it should be handled and we should not try to freeze this into the Constitution. Thank you.

CHAIRMAN GRAYBILL: Is there further discussion on Mr. Swanberg's amendment.

Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I would like to ask some questions of Mr. Swanberg.

CHAIRMAN GRAYBILL: Mr. Swanberg, will you yield?

DELEGATE SWANBERG: Yes.

DELEGATE HABEDANK: Mr. Swanberg, is there a difference between the fund that would be covered by section thirteen and the investment of school trust funds, or does section

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thirteen cover all of them?

DELEGATE SWANBERG: The language says investment of all public funds. Now, perhaps the finance committee members can enlighten us further on that but as I construe that, it would be total.

DELEGATE HABEDANK: Mr. Chairman, may I ask a series of questions?

CHAIRMAN GRAYBILL: Yes.

DELEGATE HABEDANK: Mr. Swanberg, is it not correct that in most of these school trust funds, at least, approximately ninety-five percent of the income is paid out each year and only five percent goes back into the principal fund?

DELEGATE SWANBERG: I'm not familiar with that, Mr. Habedank.

DELEGATE HABEDANK: May I ask Mr. McDonough that question?

CHAIRMAN GRAYBILL: Mr. McDonough, would you like to yield?

DELEGATE McDONOUGH: Repeat your question, would you please?

DELEGATE HABEDANK: Is it not true that in connection with school trust funds, ninety-five percent is paid out for the schools each year and only five percent goes back into the principal trust -- or approximately that?

DELEGATE McDONOUGH: That's essentially correct, yes.

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DELEGATE HABEDANK: Then, was it your thought that if you were limited -- Mr. McDonough, please. Was it the thought of your committee that if you were limited to investing only in fixed income items, such as bonds, and you paid out ninety-five percent each year, your principle would, in fact, decrease to a fraction of what it was as outlined by Dr. Heliker.

DELEGATE McDONOUGH: Well, it certainly would if you start out with forty million dollars and twenty years later the dollar went down to fifty cents in value, you'd only have twenty million dollars afterwards.

DELEGATE HABEDANK: If you had paid out all your interest each year except the five percent.

DELEGATE McDONOUGH: That's correct.

DELEGATE HABEDANK: Thank you.

DELEGATE McDONOUGH: One other point I would like to make is that the permanent school fund under article eleven, the wording of that is insured by the state of Montana against any loss, which means that if they lose any money in the permanent school fund, the legislature has to raise taxes to replace that money.

DELEGATE HABEDANK: Thank you.

CHAIRMAN GRAYBILL: Mrs. Speer.

DELEGATE SPEER: I wish to speak in opposition to the Swanberg amendment because I feel that it freezes into the Constitution some of the most severe restrictions that exist there.

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For instance, the phrase, limited to public investments within the state. That certainly represents the perspective of 1889 and I'm sure and I know that we have broadened our outlook since that date. The only other point that I wanted to raise is that this provision that we now have in the Constitution and it's found in Mr. Swanberg's amendment, does not say anything about the unified trust funds, the unified system. I think the supreme court has upheld the department of investments which puts the investments under a specialized agency, but I know that there are many departments that are still resisting that and I think it should be in the Constitution that we are to have a unified investment system.

CHAIRMAN GRAYBILL: Mr. Swanberg -- Mr. Barnard, do you want to make amendments now or do you want to wait until he's finished?

DELEGATE BARNARD: I will just speak on this --

CHAIRMAN GRAYBILL: All right, you want to speak on Mr. Swanberg's amendment -- go ahead.

DELEGATE BARNARD: I rise in opposition to Mr. Swanberg's proposed amendment. The principal thing in Mr. Swanberg's amendment proposes that we can -- the state can invest in corporate bonds, and the concensus of the minority of the Education Committee is they didn't want this done, and for that reason, I oppose Mr. Swanberg's amendment.

CHAIRMAN GRAYBILL: Mr. Davis.

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DELEGATE DAVIS: Would the Chair permit me to discuss what the amendment of Mr. Barnard's is in relation to these other amendments because it is actually a little stricter. His proposed amendment --

CHAIRMAN GRAYBILL: The Chair will permit you to explain what another amendment might be that might come up later, yes.

DELEGATE DAVIS: Mr. Barnard has an amendment which would restrict you to public school funds to be more conservatively invested in bonds of the United States, or other securities fully guaranteed as to principle and interest by the United States, so it seems like we have three options and this group will have to make a decision. The first option is whether you want the restrictions just as provided by the legislature. The second option, which is as proposed here, is whether the investment of all public funds can be made in securities of the state of Montana or in bonds guaranteed by the United States as to principle and interest, federal land bank bonds and corporate bonds of investment quality. And, then, the third option will be as to whether you want to make a further limitation on just the public school funds and guarantee them against loss or diversion. The majority report is similar to the majority report we came up with in Education and Public Lands, and the recommendation of the legislative council and the commission on constitutional revision was to leave this

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entirely to the legislature and open it completely up. We have that in our -- I think, in our majority or language to that effect, as provided by law. Subsequent to getting this out, I think we've all taken a second look at the school funds, at least as far as they're concerned, as to whether or not we want to have any nature of speculation at all on those. We are one of the few states that has this fifty-two million dollars left. I daresay that if we were -- had, over the last sixty years, seventy years -- if we had had the option, if it hadn't been locked in the Constitution, of speculating with this, we might have had a lot more money but we might not have had none. Most of the states now don't have any, so I think it's the general concensus of the members of our Committee on Education was that we felt we might be getting a little too loose with it, that we should -- the school money itself, lock it back in the Constitution. It's not always to change things -- doesn't necessarily always mean we're going to improve on them. In this particular instance, as with our public lands, I think our forebearers did an excellent job. We've still got the money and the question then would be whether you want to liberalize the investment potential to take care of inflation, also to take care of the chances of what might happen in the financial world, whether you just want to leave it up to the legislature to go along, or whether you want to make it more restrictive. Now, frankly, Mr. Artz's amendment and Mr. Swanberg's amendment is

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more or less of a compromise between the original position of the public education committee on this particular article and on our second thought about putting it back in the old constitutional language, because it does include private corporate bonds of investment quality. Under the school section, the public school fund, it provides, shall remain forever inviolate, guaranteed by the state against loss or diversion. So, that means that the state has to guarantee this fund, this fifty-two million dollar fund or whatever it is, plus additions thereto, which is five percent of the income. But, for depletions, such as coal, that goes into the capital. That's not income, I think. The royalty is probably income. When you deplete it, that goes into your capital account, the same as if you sell lands. And the same way with gas, and probably the coal would be the same. I frankly feel that I would prefer supporting the compromise that has now been submitted by Mr. Swanberg in liberalizing this account to the extent that you can invest in investment quality corporate bonds, partially, and in other securities guaranteed by the United States or the state as to principle interest, and I think this would probably be a wise investment of these funds and I will support the two amendments and will amend it further if we get past that.

CHAIRMAN GRAYBILL: Now, members of the body, before we go on, the Chair would like to -- I think Mr. Davis has cor-

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rectly summarized, but in case you didn't write them down, it seems we now have four positions at least visible: the position of the committee majority to have the restrictions provided by the legislature, if any; the second position of Mr. Artz to restrict investments in public -- or, in private corporate stock; the third position by Mr. Swanberg to restrict investments to public securities within the state and U. S. bonds and certain investment quality corporate bonds; and a fourth position which Mr. Barnard will make if we clear the decks here to restrict public school fund investments. Those are the four possibilities that you are discussing.

Mr. Champoux.

DELEGATE CHAMPOUX: I don't want to interject a fifth, but I may here. I think I see a possible way out of it. Mr. Heliker's comment hasn't been compromised, I don't think -- or, I mean, included in it. Do you feel that? Let me -- may I offer this. If we were to accept the majority proposal and then Mr. Barnard also has a slip-up there, I believe, to the effect that it says: The legislative assembly shall provide for a unified investment program of public funds not otherwise constitutionally restricted. Then, if we accept that with the majority proposal, then we add Mr. Barnard's amendment, which would be subsection two, to this article, I think that would pretty well take care of it. At least, I throw this out as a possibility.

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CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Berthelson.

DELEGATE BERTHELSON: Mr. Chairman, fellow Delegates, please, please think about what the many, many, many long hours the committee spent listening to this type of debate. I rise, Mr. Chairman, to resist the motion of Mr. Swanberg. Mr. Swanberg, federal land banks are not guaranteed by the federal government any more. I'd like to ask one question and have you consider this carefully. At the time this language was adopted in the present Constitution, did those writers dream that today we might have a Farmers Home Administration which the federal government guarantees with its full faith and credit as to principle and interest, and that many, many millions of dollars of Farm Home Administration bonds are sold and owned by Montanans and that money is going back into Montana agriculture today to help our state, and that at one time those Farmers Home Administration bonds earned as much as eight and a quarter percent, and today they are one of the best yielding investments. I ask you to carefully consider that when the original language, as Mr. Swanberg would have it put back into the Constitution, did those framers of the Constitution envision that the maritime commission bonds that we are talking about today would be fully guaranteed as to principle and interest by the United States government. I could go on and on and talk about these things again, referring to the many, many hours of debate

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and the witnesses that this committee listened to night after night and long day after day. I resist the minority motion. I would ask each of you in this body to turn to the Education Committee's report and read what it says in the Education Committee in their majority article on page fifteen; then read what they say in their minority article on page forty. Mr. Davis referred to it that in that committee report the public school fund that everyone seems to be concerned about are guaranteed to be held inviolate and forever protected by Montana. Now, I think that when you consider that and consider the work of this majority committee, it should allay everyone's fears. I resist the amendments. I resist any motions to amend the amendments and I ask you to please consider the majority report and as it cuts across the education report. Now, someone didn't do their homework very good when they said that Montana was the only state that had anything left in their public school fund. This committee, I believe, did its homework with the amount of time that it had allotted to it. We have a near sister state that has in its permanent school fund not fifty-two million dollars that we're so proud of, but that sister state has in its permanent school fund two hundred fifty two million dollars. I think there's one comment here that should have some influence on our thinking. This sister state, or near sister state is rated nationally as having one of the very finest investment programs. This state does, too, the

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state guarantees to hold inviolate these public school funds but up until the time in 1962 when this state allowed their public school funds to become part of a unified investment program, the average yield on their public school fund investment up to that date was two point six eight percent yield. Since 1962, that yield has been increased until, during the year 1970, which is the last report that we had to compare with -- during 1970 the yield on that particular state's permanent school was during the year six point oh-two. Mr. President and Delegates, I rise in behalf of the Revenue and Finance Committee to resist the amendments and ask that this body support the majority report and the work of the Education Committee. Thank you.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman, I, too, would like to rise in support of the committee report and I'd like to pass on to you a comment that was just made by my seat mate that getting to know old Earl was worth the whole trip over here, and I'm glad that Earl was able to express himself because he has certainly shortened my comments considerably. I would like, if I may, in support of the committee report, to bring a little more input into this conversation that has not come up yet. I'd like to review a little bit what has happened to our investment program here in the state. At one time, we were informed through testimony, the investment of Montana's funds

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was in the hands of several departments. Supposedly, the responsibility and authority was in the state -- in the hands of the head of the state land department, but over years of practices that were just a little bit happenstance in the investment of these monies -- notes would be sent over saying we invested in certain funds -- and as a result of these practices there was considerable doubt as to how much, how many, where and whyfor the investments were made. Now, as a result of the legislative reorganization, we are on a road that appeared to our committee to be a pretty healthy road to travel from the investment standpoint. The investments have been computerized. They are pretty close, they tell me now, to knowing about where Montana's money is, about what the returns are on these monies, and about what the value and worth of the investments are. Now, with this as a background, the fact that we have moved so far in the past few years in this investment program, one of the considerations of our committee was that perhaps we would go another step further, or maybe two steps further. Perhaps at some point in the future the state funds or the state investment people may use the services of very qualified firms or organizations that are in existence here in the United States to actually do the investing of certain types of our funds. Now, it happened some weeks ago I happened to encounter some people who are with one of these funds. I didn't turn them on the state of Montana but I asked them quite a few ques-

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tions. It happens that they invest the funds, or they are retained by four different states. They happen to be located in Baltimore, Maryland. They invest four billion dollars. And, after talking to them, I came away with the feeling that for us to put limitations in the Constitution on the handling of the people's money for perhaps another hundred years, we just were not -- we're just about half crazy. I said to myself, if I had X-number of dollars, would I give that to someone to manage and say, this is the only way you can investment -- to not consider the inflation thing that Dr. Heliker has mentioned, to not mention the -- to not consider the many new types of investments which may become very attractive and very safe for the state in future years. I would like to say that our committee, the Mitchell Gang, really doesn't want to invest all the state's monies in common stocks. I would like to rise in the defense of some common stocks. My friend, Mr. Artz, you heard speak against the big red apple. I would say they're not too bad some times if you happen to get to them. They're all right, but some times you do fall off the limb going after them but the fact that we are not going to put three hundred million dollars, or three hundred and fifty million dollars on one box of red apples. What people who manage money do is, they spread it out. They eliminate the risk. They lower the risk. They minimize the risk and they maximize the opportunity for gain. Now, for the people in the public employees retirement fund or

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or the teachers retirement fund, for them to be limited in the method of the investment of their funds, actually it is their money that is being put in. The state matches with a certain amount. These people should be given the opportunity to select how they wish their money to be invested. This is true in most all pension plans today. When a person signs up for a pension plan, in most -- many areas -- most, in fact, most teachers retirement funds throughout the country, they are given an opportunity to say, I'd like twenty percent of my money to go into common stocks, twenty percent into government bonds, and fifty percent in something else. This is a growing thing and for us here in the Constitution to limit the ability of the people who invest these people's money, is just is not very practical, really. So, I would say, if we could leave in the hands of the -- of good legislators of the future, because those of you who have served in the legislature know that the old, real dependable horses wind up on the finance -- in the finance area. They're the people who have come over for years and they're good solid people. I'm talking about Norris Nichols kind of guys, the Francis Bardanouve kind of guys. They're not the kind of people who are going to go out and dump three million dollars of Montana's money down the tube someplace. They're just not going to do it, and we're not going to give them the authority to make that decision. It's going to be the authority of the vote of the legislature and

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the use of their wisdom and judgment. Now, as far as the doomsday deals that you've heard Mr. Swanberg and Mr. Artz talk about, you can point -- history is replete with people who have lost money in investments. Mr. Artz described an investment he made in some common stock that went from seventy to six. Well, I can tell you of some people I know that got in some things at eight cents and it's up to twenty-nine dollars and fifty cents today. So, everything is not bad. There are things that are -- that go up. The thing that I'm saying, that people who know how to invest money and whose business it is to invest money are able to evaluate and may be able to make a real contribution to a greater income for the people at some point down the road. Now, the return from the school trust fund, if the proper investment is made, or even more profitable investment is made, returns to us as tax relief. Any way we can -- any greater amount of money we can bring in than we are bringing in, is money that will appear somewhere in our appropriations as tax relief to the taxpayer. Now, I think that's something we should all consider. The faith that Dr. Heliker mentioned in the private enterprise system, I think, is the thread that ran through our committee after we heard, as Mr. Berthelson said, we heard the same comments, the same arguments, the same proposals, really, in our committee and we spent many enjoyable hours, really, there listening to them. But, I think it really all boils down to this--the American system of private enter-

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prise ain't too bad. It's a growing economy. There may be losers, and there are a lot of winners, but if we have faith in that economy and are willing to allow our people to make the decision of whether they want to participate in the growth of the American economy, I think this Constitution should allow them that latitude. I support the majority report. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I just what this assembly to know why the non-affluent business man of this team has not been speaking on this subject. I recognize when I have talent and I yield to the affluent man and the banker when it comes to talking about investments. We listened for hours to the investment board and we feel they are in very good hands and I think the last two speakers have very ably stated the case of the majority report over the minority report. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Swanberg, do you want to close? Mr. Barnard, do you want to speak before he closes? You were at this point about a half an hour ago.

DELEGATE BARNARD: Mr. President, yes, I would like to speak just a second.

CHAIRMAN GRAYBILL: All right.

DELEGATE BARNARD: I would just like to point out there is no intention on the part of the Education Committee in either the minority or the majority reports to remove these

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funds from the unified investment program. They just want to put a little additional limitation on how they may be invested. We are in full agreement with the unified investment program.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: I know I've spoken too much today, but I rise in support of the majority report. It seems to me that this has been a splendid committee and that in line with my philosophies to let the future to the generations yet unborn, I am willing to trust the people of Montana who they will elect to the legislature. If they elect people to the legislature that are crooks, we can turn back the course of history and we can resurrect the vigilante committees and hang some people from the capitol dome.

(Laughter)

DELEGATE JOYCE: But, I'm not afraid of the future or of the people of Montana and I submit the progressive majority report and I'm all for them.

CHAIRMAN GRAYBILL: Mr. Swanberg, you may close.

DELEGATE SWANBERG: Thank you, Mr. President. Just a few short comments. I, too, think the Finance Committee has come in with a splendid report and I do not like to do anything here which mars an almost perfect record. Nevertheless, I do feel the motion submitted has merit. Briefly, now, this question of bonds and inflation--they say if you invest in stocks you ward off the possibilities of losing your money through in-

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flation. Well, let me tell you something. You can ward off inflation through bonds, also. Now, consider this. Right now, if you'll look in the newspaper you can prove it for yourself, you can buy a bond of American Telephone and Telegraph Company that pays four percent for seventy-five dollars on the hundred. That bond is due in roughly twenty years. If you pay seventy-five dollars for that bond, it's supposed to -- it has a coupon of four dollars, you are in effect getting an investment of five percent, so that all during that twenty years you are getting five percent on your money and then, at the end of the twenty years, you get back not seventy-five dollars that you paid for it, but you get back a hundred. So that, all during this period you have been receiving a very nice five percent return, very safe, and at the end of the period you get back a hundred dollars. Now, if that isn't some protection against inflation, I don't know what it is. They say if you invest in common stocks you will ward off inflation. Well, which stocks? That's the question. Ten years ago if we would be having this discussion, they would have said buy utility stocks, buy insurance stocks, and most of your investment managers would have bought those stocks, only to find that today they are lower than they were ten years ago. Does that guard against inflation? I don't think that it does. What it boils down to here is a question of safety of your capital, safety of your principle, as against the hope of some small gain in the stock

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market and this is the very thing we want to guard against. We want to guard against this hope of some gain in the stock market, having a legislator -- a legislature in some period of financial frenzy -- they say it won't happen again; I say it will happen again -- coming in here and opening up the doors to wild investments and our whole investment program goes down the tube, or a substantial part of it. Now, these small losses that you would incur by this conduct would more than offset the gain that you might not have made by keeping your money in safe investments. There is one final comment. I would like to delete from my motion those federal land bank bonds which are not guaranteed by the government. I guess they ought to come out of there.

CHAIRMAN GRAYBILL: First of all, then, is there any objection to deleting the federal land bank bonds?

(No response)

CHAIRMAN GRAYBILL: All in favor of deleting them, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: All right, they're out. Now, the issue is on Mr. Swanberg's amendment. The effect is that section thirteen of the committee report would be amended by adding the language of Mr. Swanberg's amendment, probably on

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line one, after the word, maintained. But, in any event, to add this paragraph to the minority report. The paragraph allows investment of public funds in public securities within the state and in bonds of the United States, fully guaranteed, and in certain private corporate bonds of investment quality. Do you want a roll call?

DELEGATES: Yes.

CHAIRMAN GRAYBILL: Very well, we'll have a roll call. All in favor of Mr. Swanberg's amendment vote Aye; all opposed vote No. Have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, the ballot is closed. Please take the vote.

Aasheim	-	Nay	Barnard	-	Nay
Anderson, J.	-	Aye	Bates	-	Nay
Anderson, O.	-	Nay	Belcher	-	Excused
Arbanas	-	Excused	Berg	-	Aye
Arness	-	Nay	Berthelson	-	Nay
Aronow	-	Aye	Blaylock	-	Nay
Artz	-	Aye	Blend	-	Nay
Ask	-	Aye	Bowman	-	Nay
Babcock	-	Absent	Brazier	-	Nay

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1	Brown	-	Nay	Hanson, R. S.	-	Nay
2	Bugbee	-	Nay	Hanson, R.	-	Aye
3	Burkhardt	-	Nay	Harbaugh	-	Absent
4	Cain	-	Nay	Harlow	-	Nay
5	Campbell	-	Nay	Harper	-	Nay
6	Cate	-	Absent	Harrington	-	Absent
7	Champoux	-	Nay	Heliker	-	Nay
8	Choate	-	Nay	Holland	-	Excused
9	Conover	-	Nay	Jacobsen	-	Nay
10	Cross	-	Nay	James	-	Nay
11	Dahood	-	Nay	Johnson	-	Nay
12	Davis	-	Aye	Joyce	-	Nay
13	Delaney	-	Aye	Kamhoot	-	Absent
14	Driscoll	-	Nay	Kelleher	-	Nay
15	Drum	-	Nay	Leuthold	-	Nay
16	Eck	-	Nay	Loendorf	-	Nay
17	Erdmann	-	Nay	Lorello	-	Absent
18	Eskildsen	-	Excused	Mahoney	-	Aye
19	Etchart	-	Nay	Mansfield	-	Aye
20	Felt	-	Excused	Martin	-	Nay
21	Foster	-	Nay	McCarvel	-	Aye
22	Furlong	-	Nay	McDonough	-	Nay
23	Garlington	-	Nay	McKeon	-	Aye
24	Gysler	-	Aye	McNeil	-	Nay
25	Habedank	-	Nay	Melvin	-	Nay

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Monroe	-	Absent	Simon	-	Nay
Murray	-	Nay	Skari	-	Nay
Noble	-	Nay	Sparks	-	Absent
Nutting	-	Nay	Speer	-	Nay
Payne	-	Nay	Studer	-	Aye
Pemberton	-	Absent	Sullivan	-	Aye
Rebal	-	Nay	Swanberg	-	Aye
Reichert	-	Nay	Toole	-	Aye
Robinson	-	Nay	Van Buskirk	-	Aye
Roeder	-	Nay	Vermillion	-	Aye
Rollins	-	Nay	Wagner	-	Nay
Romney	-	Aye	Ward	-	Nay
Rygg	-	Nay	Warden	-	Nay
Scanlin	-	Nay	Wilson	-	Aye
Schiltz	-	Nay	Woodmansey	-	Nay
Siderius	-	Nay	Mr. Chairman	-	Nay

CLERK SMITH: Mr. Chairman, twenty-one voting Aye, sixty-five voting No.

CHAIRMAN GRAYBILL: Sixty-five having voted No, twenty-one having voted Aye, the motion fails. We are now debating Mr. Artz's motion to amend the majority report by adding the language: With the exception of monies contributed by individuals to retirement funds, no public funds shall be invested in private corporate capital stock.

Mr. Aasheim.

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DELEGATE AASHEIM: Mr. Chairman, I rise in support of the Artz amendment. First, I want to make a comment that has not been contested that our public school funds are held inviolate. That's a high sounding phrase, that they are held inviolate. But suppose, suppose that any of these funds are invested in common stocks and we know the probability and the possibility that those stocks could become one-third their value, one-fourth their value. Mr. Berthelson said they are held -- this money is inviolate. Inviolate by whom? Who is going to replace that money if it's lost? The legislature, isn't it? And, who is going to force the legislature to make that money good? Can you do it? There's nothing under heaven or above earth that can make them do it unless they want to, and if they need forty million dollars to replace this inviolate fund, they're not going to find it. So, let's not be too sure about this inviolate proposition. Sure, back ten years ago, I, too, said these common stocks are good investments but today I have surely changed my mind. I have changed my mind, and as Mr. Swanberg said, these bonds are pretty secure and they are rising in value as the years go by. You buy them below par and they mature at a hundred percent and that is capital gains, and we have. They're a security that we do not have in common stocks. And, by the way, when teachers and policemen and members of the employment group here on the capitol building, anywhere, when they put their dollars into a

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retirement system, they want dollars back. They want dollars back because that's what they live on, not some potential. Now, I heard some time ago that we should use this money and swing with it. Well, yes, that sounds good but I feel we might be waltzing with Matilda over to Sydney, Australia. And, just suppose -- now, just imagine, we have an investment counselor down here, and he's a good one as far as I know -- I've talked with him -- because I'm concerned about this money. Is there anything to prevent him from setting up a corporation over in Australia or over in Scotland or someplace and invest this money -- not a million dollars, couple of million dollars -- nothing to stop him. He says there is but the investment board meets once every month. Oh, yes, we know that we have auditors. You bankers have auditors and you bankers have also read in the newspapers where these auditors made a mistake and we find people have gone off with a million dollars, even with good auditing. Now, you know that's a fact. Now, we want security for these monies because a legislature is not bound to replace it and I've got a list here I can show you where the state of Washington borrowed from teachers retirement some seventy-five million dollars and they haven't replaced it. So, you think very seriously about this amendment of Mr. Artz's, and I like it because he doesn't preclude investing in other monies. This man down here the other day when I was sitting there invested two million dollars of money floating around

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in banks. He just invested and overnight he had made a pretty good chunk of money, and I don't object to that, but to invest these school monies, these -- this that we have set aside as a trust -- it isn't a trust if we put it in some stocks and I ask you to look again at Mr. Artz's amendment.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I would just like to add a brief footnote to what Mr. Aasheim has just said, and I agree with him in terms of the comments he made about the guarantee against loss and diversion, but, Mags, if the legislature did decide to replace it, where would that money come from? Would it not come from us, the people?

CHAIRMAN GRAYBILL: I think that's a rhetorical question.

Mrs. Cross.

DELEGATE CROSS: Mr. Chairman --

(Inaudible remarks by Mr. Champoux.)

CHAIRMAN GRAYBILL: All right, you want him to yield. Then you have to ask that. I can't --

DELEGATE CHAMPOUX: Mr. Aasheim, if the legislature decided to make up the loss, who would pay for it, sir?

DELEGATE AASHEIM: If they decided to do that, the taxpayers would, but there's nothing to force them to do so and you, if you have money in the teachers retirement system, you are the loser.

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Mrs. Cain.

DELEGATE CAIN: Yes, Mr. President, I'd like to ask Mr. Artz a question.

CHAIRMAN GRAYBILL: Mr. Artz, do you want to yield?

DELEGATE ARTZ: Yes.

DELEGATE CAIN: Mr. Artz, in states and systems where they have this kind of investment for retirement money, are the individual retirees or people who belong to this association, are they allowed to make a decision as to what their money is used for?

DELEGATE ARTZ: I think, Mr. Chairman, as I recall from the testimony, there are certain states that have it set up that are highly computerized where the individuals can make that choice and my plan does provide that the individuals can make a choice for the money they put in.

DELEGATE CAIN: I see. Well, in that case I would support your amendment.

CHAIRMAN GRAYBILL: Mr. Habedank, did you wish to speak?

DELEGATE HABEDANK: Mr. Chairman, I'd like to ask Mr. Aasheim if he'd yield to a question.

CHAIRMAN GRAYBILL: Mr. Aasheim?

DELEGATE AASHEIM: I've been waiting because I saw the glint in your eye.

DELEGATE HABEDANK: Mr. Aasheim, I'm not completely

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sure about my Montana history, and I'm sure you are, but in the 1920's didn't the legislature cause a great deal of loss to the school funds through loans to farmers and bad loans and the supreme court forced them to replace it?

DELEGATE AASHEIM: I really don't know, Mr. Habedank. I can't answer that. My memory fails me in that respect.

DELEGATE HABEDANK: Mr. Chairman, may I ask another question?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE AASHEIM: I yield.

DELEGATE HABEDANK: If the supreme court did force the legislature to replace it, would your statement still be the same, that no one can force the legislature to replace that money?

DELEGATE AASHEIM: I don't know for sure, Mr. Habedank. You can lead a horse to water but you sure can't make him drink.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: I rise in support of the majority report. I think that Delegate Aasheim's comments might be well taken. Seems to me, though, he's talking about human frailty and I don't care what system you have, that's possible.

CHAIRMAN GRAYBILL: Mr. Roeder.

DELEGATE ROEDER: Mr. Chairman, I'd like to respond to Mr. Habedank's questions. The answer is yes. When the home-

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stead boom collapsed we had put a lot of common school capital into that bubble and when it burst, we adopted a program of recouping the fund and I think the last payment made back into the fund was made in 1957.

CHAIRMAN GRAYBILL: Mr. Davis, now we're -- Mr. Davis, I just want to caution the body again we are debating Mr. Artz' amendment to add this limitation on investment in common stock.

Mr. Davis.

DELEGATE DAVIS: I'll wait on mine.

CHAIRMAN GRAYBILL: O.K.

Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, this was caused by the supreme court in the Constitution taking protection. This is why they had to pay it back. The supreme court says, you're in violation. Now, if we get this, they won't have to. It wouldn't be under this system. The supreme court is not -- could not say it because there's no question here that we have to hold it. This is what the thing is. Now, if you adopt this majority report as is, then the supreme court can't tell them to do it. It will be up to the legislature if they will and wish to do it. I hope they do. Now, I think we have to realize that these funds are -- most of this is school fund and this is the one that's worrying me. I don't worry so much about the others. They created -- a fund has been created by teachers retirement, PERS, and that, and if they lose it's

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there but not the school kids. These school children -- this land was given to the school children in the state of Montana and this is what -- now, Montana has not seen. In answer to Mr. Berthelson, and I don't know what state he was talking to, had we sold a lot of this land we would have had a lot more money in the fund, but thank goodness, the state of Montana for quite a few years ago, they started to decide to slow up on sales of this land and this was one hedge against inflation. You got the acres of the land out here and it's still worth and it's still bringing in. If you sold it and went out here, especially if you sold it back at the time it was selling for fifty, seventy-five, or a dollar an acre, we didn't get much. Now, this same land is worth an awful lot. I'm sure glad we didn't sell that school section that we're going to get the great amount of money on and, thank goodness, we had far-sighted people that wasn't looking for the dollar and getting that -- they says, we'll just hang on. Now, all that I think in this is that we should be far-sighted and say, put this little provision in to slow down future legislators. I trust them but I've got to go back -- and I see Arlyne Reichert looking at me -- I trust them Arlyne but I go back to this story of Amos and Andy, and probably none of you remember Amos and Andy, but they're talking about Amos one night and he says to Andy -- or, Amos is asked, he says, don't you trust him, the Kingfish? Well, he says, I trust him but I sure watch him. And

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this is what I think here, that this little provision of this permanent school fund -- now, this is the baby that worries me. It's been given to us. The federal government in the enabling act gave us, and you remember when they started, where we got the five percent deal, when we got into this court Arnold Olsen took one side, the governor took another. This went to the federal court and we finally determined that this then, a certain part of it, had to go to the public school fund. Now, all I want to do is be sure it's inviolate. I know it's nice to go out and say, oh boy -- but I'd hate to have this man or the governor or the state superintendent of public instruction have to put a ticker-tape in down in her office to see how the stock market did that day. This would worry me, and I have watched right now -- the stock market has done beautiful here lately. It's going up, but, boy, when it goes down. Now, this is all I'm trying to do is to just keep for the school kids, future generations, protection and as far as these here things of these bonds, I don't want anything in there that isn't guaranteed by the federal government because we cannot print money. Montana can't. So, we will follow the fluctuation of the United States up and down. That's why I particularly want this protected.

CHAIRMAN GRAYBILL: Mr. Artz, I wanted to call on you but Mr. Vermillion beat you up.

Mr. Vermillion.

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DELEGATE VERMILLION: Thank you, Mr. President. I'll take just a half minute here. I was wondering -- remind everybody here, a couple of weeks ago in the executive -- or, rather, the legislative article, we passed a section six -- section eleven, subsection six, which says: No appropriations shall be made for any private corporation not under control of the state, and I'm wondering if the state of Montana began investing in private companies, it might be considered they were controlling those companies and therefore they would be free later on to make appropriations for those companies.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: I'd like to clear up one point that Mr. Mahoney was talking about. Let's get off that school fund kick. That's in Mr. --

CHAIRMAN GRAYBILL: Champoux.

DELEGATE McDONOUGH: Champoux -- I was going to call him Shampoo -- Champoux' article and there's only fifty-three million dollars in that school fund and it's going to be well covered by Mr. Champoux' article. We are talking about the balance of this fund, which is probably around two hundred and fifty million dollars, that has nothing to do with school funds and that's what we're talking about in this section is investment of those funds, the greater majority of which are the pension fund to the teachers retirement system and the public employees retirement system, and both of those organizations

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are represented on the investment board and agree with the majority report.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I'm going to be very brief. If you look at both the majority and the minority, and I'm directing this to you, Mr. McDonough, it talks about public funds. Now, whichever one of these goes through, we're going to move for an amendment -- that is to say, Mr. Barnard's amendment -- to protect the public school fund. So, if you're feeling that that's all right, well, we'll go along with that, and by that I mean we're going to move this amendment when we get through here. Thank you.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, are we on now Mr. Artz' proposed amendment?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE BERG: Mr. Chairman, I move to amend the substitute motion of Mr. Artz, the minority, by deleting the words, with the exception of monies contributed by individuals to retirement funds.

Mr. Chairman.

CHAIRMAN GRAYBILL: All right, you want to delete the first clause, is that right?

DELEGATE BERG: Yes.

CHAIRMAN GRAYBILL: So that you would make Mr. Artz'

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amendment read: No public funds shall be invested in private corporate capital stock. Is that right?

DELEGATE BERG: That's correct.

CHAIRMAN GRAYBILL: Very well, you may speak.

DELEGATE BERG: Fellow Delegates, there are many funds. I think I mentioned already the police retirement fund. These funds are administered by each separate city. Now, I asked Mr. Artz how it would be possible for those funds to be administered in such a way that the public portion, or the public contributions would be invested in one manner and the individual contributions perhaps in another manner, and he explained it that this can be done now by computerized equipment. I want to assure you that there is probably no city in the state that can afford that kind of computer equipment for the sole purpose of administering, for example, the police retirement fund. The firemen's fund, for example, is administered on contributions by the firemen and contributions by the respective cities and it's administered by the state auditor. I doubt very much the state auditor in this state is now or for a long time will be financially able or equipped to computerize it so he can make these investments on a different basis. But, more important than that is that if it is important that state funds be safeguarded and not invested in corporate securities of questionable character, it is equally important that the employees' funds be equally safeguarded. In other words, the

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state is the trustee of those funds that are contributed by the employee, just as much as they are a trustee of the funds contributed by a particular unit of government, so that what I am asking by this amendment is to treat everyone equally and not compel cities and not compel the state auditor and not compel the public retirement system to divulge -- to engage in two different types of investment programs, one for the employees and one for the contributions made by the units of government.

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman, I object to Mr. Berg's amendment to my amendment. It destroys the whole part of the trend there that public funds are to be treated differently than private funds. I maintain that the people who put their money in have the same right to have that money invested as they want, as I can do with mine in my own private investment program. If I want to fall off the tree, that's my business. That's their business. We have provided in the article for a unified investment program. There are computables available here. I would ask Mr. Berg to take a look in this building and go over to the Mitchell Building. That's no problem at all. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Berg's amendment to Mr. Artz's amendment. Mr. Berg would strike the first clause, with the exception of money contributed by individuals to retirement funds. He'd strike that so the

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amendment read only: No public funds shall be invested in private corporate capital stock. So many as shall be in favor of Mr. Berg's amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Mr. Berg's amendment is defeated. Mr. Artz, do you want to close?

DELEGATE ARTZ: Mr. Chairman, I take it from the vote on Mr. Swanberg's amendment, twenty-one to sixty-five, that he was too conservative. I have felt all along that my proposal was a good compromise. As far as the school funds go, Mr. Barnard has an amendment number one which would allow a few words so this would not interfere with the school people, the school committees objective to have more conservative investment of their funds. We are not attempting here to say the school funds cannot be invested more conservatively if they so wish. I might mention though in that fact, if you did put school monies into the common stock market and, say, you bought some KOA stock for a dollar and it went up to a thousand, you would have nine hundred ninety-nine dollars profit, but as I interpret the law, that would all go into the permanent fund. We wouldn't get to use any of it this year, probably five percent; whereas, if we had made the same in interest we would get to use ninety-five percent of it. But, that's just a little aside. Mr.

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Aasheim, I think, pretty well refuted Mr. Berthelson's remarks that this word, inviolate, is not quite as safe as it sounds. My only comment is that it does not insure against loss. It merely creates the possibility that the taxpayers will have to pay higher taxes to replace the money lost. Mr. Heliker was real worried about me not letting him gamble with his money, that he could make a lot. I assure him that there is no intention that any money he puts into the school funds, he can tell them to do what he wants to with it under my proposal, but I still feel that he needs just a little more protection for the part the state put in because I'd hate to see him completely broke. It would be nice if he had about fifty percent of it left. Mr. Berthelson and his remarks about Minnesota to me is merely an example of the pressure that would be put on to put yield ahead of security, and I would like to see the legislature kept free from that kind of pressure. Mr. Drum says he has fallen off the limb. I'm wondering if he's trying to get a little equalization -- does he want all the taxpayers to take a fall with him? I am in complete agreement with Mr. Drum in the fact that we have had a lot of improvement in the investment procedure for the Montana funds and I think the part of the proposal that both the majority and the minority agree on, the unified investment program, will make this better yet for the future. Mr. Drum said we could get good investment counsel and that that would insure us that we wouldn't lose any

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money in the stock market. Now, I've put some money in mutual funds and they supposedly have real good investment counsel. They have computers that analyze the market and the whole thing. But, look at their record, even the best of them. Some of them barely kept up with the Dow-Jones. And, some of them went broke. Common stock is still a gamble. Unless the Constitution is changed, gambling is illegal. Now, tax relief that he was talking about could certainly turn into tax increases very, very easily. You always have losers when you have winners; it is still a gamble. Mr. Rygg, my impression of the majority of the speakers that talked to us did not support investing in common corporate stock. I know the teachers' man was in favor of it but the rest of them said they didn't think the people would go for it. Some of them were absolutely against it. I have the notes in my records. I talked to Aronow -- Cedor Aronow, here. He went over to Piper-Jaffray about ten years ago. They're supposed to be a reputable investment firm. They give good counsel. They told him to buy Penn State -- or, Penn Central, excuse me. Now, you know what happened to Penn Central. Cedor was smart enough, he didn't do it. I'm sure that ten years ago any investment counselor would have told you that Anaconda Company was a very good buy. I recommend that you read a current issue of one of the weekly magazines and can check on their condition today. Now, Mr. Furlong spoke about frailty. Let's protect the people from as much frailty as possible. I

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think this is a good way to go there. Mr. Mahoney spoke that school funds were more important. I agree with Mr. Mahoney. I think they are. But, we also have two hundred eighty nine thousand, six hundred forty nine dollars in other funds as of October 31, 1971. Finally, the thing I started off with, remember that security is first. Let's keep the money in Montana and let's leave this yield thing on the bottom of the thing. I would like a roll call vote, Mr. Chairman. Thank you.

CHAIRMAN GRAYBILL: Very well, we'll have a roll call vote on Mr. Artz's proposal that we add this language: With the exception of monies contributed by individuals to retirement funds, no public funds shall be invested in private corporate capital stock. We're going to add that language to the majority's section thirteen. So many as shall be in favor of Mr. Artz's proposal, vote Aye; so many as are opposed, vote No. Have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, the ballot's closed. Please take it.

Aasheim	-	Aye	Arbanas	-	Excused
Anderson, J.	-	Aye	Arness	-	Nay
Anderson, O.	-	Nay	Aronow	-	Aye

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1	Artz	-	Aye	Driscoll	-	Nay
2	Ask	-	Aye	Drum	-	Nay
3	Babcock	-	Aye	Eck	-	Nay
4	Barnard	-	Aye	Erdmann	-	Aye
5	Bates	-	Aye	Eskildsen	-	Excused
6	Belcher	-	Excused	Etchart	-	Aye
7	Berg	-	Nay	Felt	-	Excused
8	Berthelson	-	Nay	Foster	-	Nay
9	Blaylock	-	Aye	Furlong	-	Nay
10	Blend	-	Aye	Garlington	-	Nay
11	Bowman	-	Nay	Gysler	-	Aye
12	Brazier	-	Aye	Habedank	-	Nay
13	Brown	-	Nay	Hanson, R. S.	-	Aye
14	Bugbee	-	Nay	Hanson, R.	-	Aye
15	Burkhardt	-	Nay	Harbaugh	-	Absent
16	Cain	-	Aye	Harlow	-	Nay
17	Campbell	-	Nay	Harper	-	Nay
18	Cate	-	Absent	Harrington	-	Absent
19	Champoux	-	Aye	Heliker	-	Nay
20	Choate	-	Aye	Holland	-	Excused
21	Conover	-	Aye	Jacobsen	-	Nay
22	Cross	-	Aye	James	-	Aye
23	Dahood	-	Aye	Johnson	-	Aye
24	Davis	-	Aye	Joyce	-	Nay
25	Delaney	-	Aye	Kamhoot	-	Aye

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Kelleher	-	Nay	Rollins	-	Nay
Leuthold	-	Aye	Romney	-	Aye
Loendorf	-	Nay	Rygg	-	Nay
Lorello	-	Absent	Scanlin	-	Aye
Mahoney	-	Aye	Schiltz	-	Aye
Mansfield	-	Aye	Siderius	-	Aye
Martin	-	Nay	Simon	-	Aye
McCarvel	-	Aye	Skari	-	Nay
McDonough	-	Nay	Sparks	-	Absent
McKeon	-	Aye	Speer	-	Nay
McNeil	-	Aye	Studer	-	Absent
Melvin	-	Nay	Sullivan	-	Aye
Monroe	-	Aye	Swanberg	-	Aye
Murray	-	Nay	Toole	-	Absent
Noble	-	Aye	Van Buskirk	-	Nay
Nutting	-	Nay	Vermillion	-	Aye
Payne	-	Nay	Wagner	-	Aye
Pemberton	-	Aye	Ward	-	Aye
Rebal	-	Aye	Warden	-	Aye
Reichert	-	Aye	Wilson	-	Aye
Robinson	-	Aye	Woodmansey	-	Aye
Roeder	-	Nay	Mr. Chairman	-	Aye

CLERK HANSON: Mr. Chairman, fifty-three voting Aye, thirty-five voting No.

CHAIRMAN GRAYBILL: Fifty-three having voted Aye,

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thirty-five No, Mr. Artz's amendment passes and it's adopted. The Chair will recognize Mr. Barnard.

DELEGATE BARNARD: Mr. Chairman --

CHAIRMAN GRAYBILL: Mr. Barnard has two amendments on your desk. The Chair has, for purposes of clarification, numbered the long one as number one and the short one as number two. Mr. Barnard, which do you want to move first?

DELEGATE BARNARD: Mr. President, I move the number one first but I would like to call to your attention that we do have a substitute amendment here, this yellow sheet, where we missed a few words in the number one --

CHAIRMAN GRAYBILL: Very well, Mr. Barnard wants to amend number one on the third line. Take number one, the long amendment of Mr. Barnard's, on the third line it says, public school fund and the -- and he wants to put in the word, permanent, there. So, write the word, permanent -- and the permanent funds of the state university. Line three, add the word, permanent after the word, the, so that it reads: and the permanent funds. And then, on the fourth line, after the word, learning, he wants to strike: from whatever sources accruing. Those four words. Strike: from whatever sources accruing on line four and five. Will the Clerk please read Mr. Barnard's amendment as -- oh, first of all, let me put it this way. Is there any objection to that? If not, all in favor say Aye, for allowing that amendment.

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DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: Very well, now we have Mr. Barnard's number one. May the Clerk read it, Mr. Barnard?

DELEGATE BARNARD: Yes, the Clerk may.

CLERK HANSON: (Reading) Mr. Chairman, I move to amend section thirteen, page twenty-nine, line twenty-one, of the Revenue and Finance Committee proposal by adding a new subsection two to read as follows: Subsection two--The public school fund shall forever remain inviolate and guaranteed against loss or diversion by the state. The public school fund and the permanent funds of the state university and of all other state institutions of learning shall be safely and conservatively invested in public securities within the state, or in bonds of the United States, or in other securities fully guaranteed as to principal and interest by the United States, or in other such safe investments bearing a fixed rate of interest, as may be prescribed by law. Signed, Barnard. (End reading)

CHAIRMAN GRAYBILL: Mr. Clerk, may I have that back? Now, Mr. Barnard's amendment has the effect of adding this language as a subsection two to section thirteen. Very well.

Mr. Barnard.

DELEGATE BARNARD: Mr. President, this is essentially the minority report of the Committee on Education and it's

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almost -- the language isn't quite identical but it actually has the same effect as the language in article twenty-one of the Constitution, and I'd like to run over it rather briefly. It says, shall be safely and conservatively invested in public securities within the state. And, the first thing you'd say is within the state -- I mean, and by saying, public securities --

CHAIRMAN GRAYBILL: Hold your mike up, Mr. Barnard.

DELEGATE BARNARD: -- we mean all securities. We don't want to limit it to state bonds or cities or towns. We mean everything within the state that issues this type of securities, or in bonds of the United States or in other securities fully guaranteed as to principal and interest by the United States. Now, someone said a while ago that there's a limitation here, that there's a lot of things the United States government guarantees that you couldn't invest in. It says -- but you will notice this -- it says, or in other securities, which would include all other securities fully guaranteed by the United States government as to principal and interest. It also goes further and says, or in other such safe investments bearing a fixed rate of interest, as may be prescribed by law. In other words, what we're trying to do here is tie these funds down a little bit tighter than some of the others are because they are -- in other words, we want to stay within the limits of the enabling act and we want to see that the funds remain

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inviolate. I happen to have been in the legislature when the state of Montana had to put in about four and a half million dollars in taxpayers' money to repay some of the losses because of poor investments. There was an argument -- it was discussed on the floor -- it went over several years of time, and I think that's about all I need to say about that. Again, one thing I might mention, it does eliminate, I believe, investment in corporate bonds and that was the intention of the minority report of the Education Committee and we decided that the proper place it belonged was in the Revenue and Finance report.

CHAIRMAN GRAYBILL: Very well, is there discussion on Mr. Barnard's amendment?

Mr. Davis.

DELEGATE DAVIS: Fellow Delegates, we worked and tried to work out a trust and legacy article and that has seventeen sections in it, if you recall, and they are extremely confusing and most of them are obsolete, so if we can dovetail the education, it will be in this article. There's not going to be a separate trust and legacy article to our knowledge, unless someone puts it in. This is a further restriction that Mr. Barnard has requested to apply only to the public school fund and those funds are set out under this excellent treatment by taxation and finance you have. It outlines them all and gives a good history on them. The last sentence of Mr. Barnard's proposal says: or in other such safe investments bearing a

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fixed rate of interest, as may be provided by law, so that opens the door about as completely as you can so it looks like you can invest in anything as long as it's not limited by the previous one on stocks. The first part of it, I think, is extremely important that the public school fund shall remain inviolate and guaranteed against loss or diversion. There has been some discussion here this afternoon, and I think we ought to clarify that at this time. In 1917, the legislative assembly passed the farm loan act as part of the -- and as a part of which school permanent funds could be invested in farm loans. Beginning around this time and continuing for several years, drouth and adverse conditions placed the farmers in a precarious economic condition. In the 1917 act, the state land board loaned school money from the school permanent fund to ranchers and farmers and took first mortgages as security. The mortgagee was the state. By June 1922, there were twenty-two hundred and ninety-one loans on the books valued at four million five hundred and seventeen thousand, eight hundred and eighty-two dollars with delinquent interest at six percent of two hundred and eighty-two thousand, five hundred seventy-four dollars and seventy-seven cents. Up to that time the state department of state lands and investments was forced to pay out forty-five thousand, two hundred and ninety-seven dollars for taxes in order to protect the state's title to these mortgaged lands. In 1923, seventy-nine thousand some dollars was invest-

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ed and another hundred thousand in '24, and this act was repealed in 1933 and eighty-five percent of all the lands given as security were obtained by the state through foreclosure of quit claim deeds and the state then found that they had an unpaid principal invested, including unpaid taxes and other costs, exclusive of all unpaid interest of four million, two hundred and fifty thousand, six hundred and twenty-five dollars. The legislative assembly was pressured by the school interests and they passed legislation to repay the principal amount to the permanent school fund. To do this, they set up a farm loan sinking fund and took over and administered all the foreclosed lands. The income went into the sinking fund and was then paid to the school fund. During this period, the original owners were given time to redeem their farms, up until March of '41. In all, two thousand, three hundred and sixty-three original loans were made and there were eight hundred and three some thousand acres involved. After the principal had been paid to the permanent fund it was suggested to the legislative assembly that the permanent school fund was in arrears a good share of interest on its money between the years 1916, when the first loan was made, and the time the state assumed responsibility in 1933. Even after that date, any unpaid principal was earning only two percent against the original loans which carried six. In 1949, a bill was passed to repay this interest due from the state farm loan sinking fund at a rate on the loans, less the

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two percent interest already paid. This continued in 1953 when a million seven hundred and thirty-seven thousand was still due in interest. A bill was then presented to the legislative assembly stating the state would turn over the remaining three hundred and forty thousand, nine hundred and seventy-nine acres of farm lands into the permanent school fund as repayment in full of the interest due, and this bill was passed. With this strong statement Mr. Barnard has -- it's the same as contained in the existing Constitution that they'll remain inviolate and guaranteed by the state against loss or diversion, and that has happened in our history of Montana and we should keep it in there and I think we should take his restriction on this fifty-two million dollars of state funds and we also have many more dollars coming in through the sale of state lands, royalties and depletion allowances. Thank you.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: One other comment, if I may. Some of you may wonder why we are also including this in here at this point. Part of the enabling act indicates that we have to apply some measure of protection and in 1964, the U. S. government set up a commission to attempt to get rid of all of these enabling acts. As a matter of fact, there has been some that have already gotten rid of, so this is simply to further protect these funds if the enabling act happens to be simply eliminated by the federal government. Thank you.

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CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: Mr. President, I rise in support of this amendment to the taxation and finance. This is part of our education proposal and I am very interested in the secure and safe investments of our school funds, and I hope that you will support it.

CHAIRMAN GRAYBILL: Mr. Woodmansey.

DELEGATE WOODMANSEY: I ask for a roll call vote.

CHAIRMAN GRAYBILL: We're not going to vote yet. Is there any other discussion?

(No response)

CHAIRMAN GRAYBILL: Very well. Mr. McDonough, will you yield to a question from the Chair, if nobody else will ask you?

DELEGATE McDONOUGH: Yes, sir.

CHAIRMAN GRAYBILL: I'm disturbed by the phrase, shall be safely and conservatively invested in public securities within the state. I don't know what that means. Do you?

DELEGATE McDONOUGH: Not too well, but I think it means municipal bonds issued within the state of Montana by its subdivisions.

CHAIRMAN GRAYBILL: Would you yield to another question?

DELEGATE McDONOUGH: Yes, sir.

CHAIRMAN GRAYBILL: Could the court interpret that to

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mean that a publicly issued stock of a Montana company?

DELEGATE McDONOUGH: It could be interpreted that way on an issue that's only sold within the state so it doesn't have to be any registration statements filed, and so forth and so on, other than with the auditor.

CHAIRMAN GRAYBILL: If it's publicly issued and is a security within the state, would that language cover it?

DELEGATE McDONOUGH: I -- if they don't look at anything else it certainly would cover it and say it could be invested.

CHAIRMAN GRAYBILL: Mr. Barnard, would you yield to a question from the Chair?

DELEGATE BARNARD: Yes, I would.

CHAIRMAN GRAYBILL: Is it your intention to allow the public school funds to be invested in private stock of Montana -- of corporations, private corporations that publicly issue stock but are limited to Montana only?

DELEGATE BARNARD: Would the Chair repeat the question again? I'm a little bit hard of hearing.

CHAIRMAN GRAYBILL: Right. The words are, public securities within the state, and a private Montana corporation could publicly issue securities within the state without being subject to S.E.C. regulations. I want to know if that language means the state school money could be invested in them, which obviously would be unsafe, or why it couldn't be interpreted

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that way? Is that what you intend--that's my question.

DELEGATE BARNARD: Well, Mr. Chairman -- Mr. President, rather -- I think that's an oversight on the part of -- when we drafted this legislation and I think we should put the words, state of Montana, in there and I'll so move.

CHAIRMAN GRAYBILL: You mean public securities of the state of Montana? I don't understand your --

DELEGATE BARNARD: Not of the state of Montana but within the state of Montana so it could include school districts and cities and all of those other things.

CHAIRMAN GRAYBILL: The Chair is only concerned -- I'm sure you intend to mean municipalities, Montana municipalities. But, the Chair is concerned and some of the lawyers here should become concerned and decide what to do here. I'm not trying to write it. I'm just raising the issue of whether or not those words don't allow us, if we pass them, to invest in the public stock, publicly offered stock of private Montana corporations which obviously would not necessarily be a good investment.

DELEGATE BARNARD: I know that it was certainly not the intention of the committee, either the majority or the minority, and if there's need for correction of the wording there, I'd certainly be glad to accede to anything that would be practical.

CHAIRMAN GRAYBILL: Mrs. Cain.

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DELEGATE CAIN: The words are taken from section three of the existing Constitution -- in public securities within the state. What Mr. Barnard and the rest of us who signed the minority meant, securities of the state of Montana and its subdivisions -- political subdivisions.

CHAIRMAN GRAYBILL: Mr. Champoux, I'll recognize you but is Mr. McDonough working on the problem?

DELEGATE CHAMPOUX: I'm going to move -- are you going to move?

CHAIRMAN GRAYBILL: All right, go ahead.

DELEGATE McDONOUGH: Mr. President, I wonder if Mr. Barnard would accept this: invested in public securities of the state, its subdivisions, local governmental units and districts?

DELEGATE BARNARD: Mr. President, I wonder if the gentleman would repeat the statement a little bit louder. I just didn't get quite all of that.

DELEGATE McDONOUGH: Invested in public securities of the state, its subdivisions, local governmental units and districts.

DELEGATE BARNARD: I certainly would.

CHAIRMAN GRAYBILL: Very well, Mr. Barnard proposes that we amend his amendment here by adding on the fourth from the bottom line, after the word, securities, the words, securities of the state, its subdivisions and local governmental

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units and districts within the state, so that the sentence would be -- the clause would be that the funds of the public school funds may be -- shall be safely and conservatively invested in public securities of the state, its subdivisions and local governmental units and districts within the state, or in bonds. Now, is there any discussion of the proposed interlineation amendment here that we have made?

Mr. Conover.

DELEGATE CONOVER: Would you repeat that, Mr. President? Would you repeat that again?

CHAIRMAN GRAYBILL: Right. Four lines from the bottom, after the word, securities, we write in: of the state, its subdivisions and local governmental units and districts within the state -- the within the state is there. All in favor of that interlineation, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: Very well. I don't like to interfere up here but I don't think we want to get that adopted unless we know what it means. Is there further discussion of Mr. Barnard's language?

(No response)

CHAIRMAN GRAYBILL: Mr. Barnard, would you like to close?

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DELEGATE BARNARD: Yes, I'd like to close, Mr. President, but I don't think there's much more to be said. I think most everybody has their mind made up. We just want to add a little more security to these trust funds, be a little more in compliance with the enabling act, and I think that's all I have to say.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Barnard's amendment which would add a subsection two to section thirteen, which would read: The public school fund shall remain forever inviolate and guaranteed against loss or diversion by the state. The public school fund and the permanent funds of the state university and all of the other state institutions of learning shall be safely and conservatively invested in public securities of the state, its subdivisions and local governmental units and districts within the state, or in bonds of the United States, or in other securities fully guaranteed as to principal and interest by the United States, or in other such safe investments bearing a fixed rate of interest, as may be prescribed by law. Did you ask for a roll call vote?

DELEGATE WOODMANSEY: Yes.

CHAIRMAN GRAYBILL: All right, a roll call vote. So many as shall be in favor of Mr. Barnard's amendment, vote Aye; so many as shall be opposed, vote No. Have all the Delegates voted?

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(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, the vote is closed. Please take the vote.

Aasheim	-	Aye	Bugbee	-	Aye
Anderson, J.	-	Aye	Burkhardt	-	Aye
Anderson, O.	-	Absent	Cain	-	Aye
Arbanas	-	Excused	Campbell	-	Aye
Arness	-	Absent	Cate	-	Absent
Aronow	-	Absent	Champoux	-	Aye
Artz	-	Absent	Choate	-	Aye
Ask	-	Absent	Conover	-	Aye
Babcock	-	Aye	Cross	-	Aye
Barnard	-	Aye	Dahood	-	Absent
Bates	-	Aye	Davis	-	Aye
Belcher	-	Excused	Delaney	-	Aye
Berg	-	Aye	Driscoll	-	Absent
Berthelson	-	Nay	Drum	-	Absent
Blaylock	-	Aye	Eck	-	Aye
Blend	-	Aye	Erdmann	-	Aye
Bowman	-	Absent	Eskildsen	-	Excused
Brazier	-	Aye	Etchart	-	Absent
Brown	-	Nay	Felt	-	Excused

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1	Foster	-	Nay	McCarvel	-	Absent
2	Furlong	-	Aye	McDonough	-	Aye
3	Garlington	-	Nay	McKeon	-	Aye
4	Gysler	-	Aye	McNeil	-	Aye
5	Habedank	-	Aye	Melvin	-	Aye
6	Hanson, R. S.	-	Aye	Monroe	-	Aye
7	Hanson, R.	-	Aye	Murray	-	Absent
8	Harbaugh	-	Absent	Noble	-	Aye
9	Harlow	-	Nay	Nutting	-	Nay
10	Harper	-	Nay	Payne	-	Aye
11	Harrington	-	Absent	Pemberton	-	Aye
12	Heliker	-	Nay	Rebal	-	Aye
13	Holland	-	Absent	Reichert	-	Aye
14	Jacobsen	-	Aye	Robinson	-	Aye
15	James	-	Aye	Roeder	-	Nay
16	Johnson	-	Absent	Rollins	-	Nay
17	Joyce	-	Absent	Romney	-	Aye
18	Kamhoot	-	Aye	Rygg	-	Aye
19	Kelleher	-	Aye	Scanlin	-	Nay
20	Leuthold	-	Aye	Schiltz	-	Nay
21	Loendorf	-	Nay	Siderius	-	Aye
22	Lorello	-	Absent	Simon	-	Aye
23	Mahoney	-	Absent	Skari	-	Aye
24	Mansfield	-	Aye	Sparks	-	Absent
25	Martin	-	Aye	Speer	-	Absent

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Studer	-	Absent	Wagner	-	Aye
Sullivan	-	Aye	Ward	-	Aye
Swanberg	-	Aye	Warden	-	Aye
Toole	-	Aye	Wilson	-	Aye
Van Buskirk	-	Absent	Woodmansey	-	Aye
Vermillion	-	Aye	Mr. Chairman	-	Aye

CLERK SMITH: Mr. Chairman, fifty-nine voting Aye, fourteen voting No.

CHAIRMAN GRAYBILL: Fifty-nine having voted Aye and only fourteen No, Mr. Barnard's amendment as adopted is adopted -- his amendment as amended is adopted. Mr. Barnard, do you want to make number two? Very well, Mr. Garlington was sitting in my seat, pushed my button instead of his. May the journal show that my vote is Mr. Garlington's to keep him out of gaol. I trust that's not a habit of yours, Mr. Garlington.

(Laughter)

CHAIRMAN GRAYBILL: Very well. Mr. Barnard.

DELEGATE BARNARD: Mr. Chairman, first a point of information. Some of these attorneys may be -- I wonder if this amendment which states -- oh, let's see, I have the wrong one. Well, the subject -- here it is -- the amendment provides that to amend the section thirteen, page twenty-nine, line twelve of the Revenue and Finance Committee proposal by inserting after the word -- after the word, funds, the following words: not otherwise constitutionally restricted. Now, I'm

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wondering -- we don't want to remove this from the -- from the permanent -- from the regular investment funds, that is, we want it to remain a part of the unified investment program but we just want these limits on it. Now, is this necessary that we put this amendment in there or should it -- is it necessary? If it isn't necessary, let's leave it out.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: It isn't necessary and it might actually be too restrictive because the school funds should be under the unified investment program but they can be segregated and be separate to comply with the other amendment so it should not be in here as you want to amend it. It should be out, left out.

DELEGATE BARNARD: Well, that's -- Mr. President --

CHAIRMAN GRAYBILL: You withdraw it then?

DELEGATE BARNARD: If that's my understanding that this might remove this school fund from the unified investment program, I will withdraw the amendment if Mr. Champoux and the others are in agreement.

DELEGATE McDONOUGH: It might not remove it from the unified investment program. It probably will not remove it from that program but it will restrict to the investors of the program to the paragraph that was just enacted. You don't want to take it out of the program because you have it pretty well restricted as to what they can invest it in, but you want to

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leave it in the program.

DELEGATE BARNARD: Yes, we want to leave it in the program, but is this amendment necessary? I don't want to clutter up the record with unnecessary amendments.

DELEGATE McDONOUGH: No, your amendment is not necessary.

DELEGATE BARNARD: Well, very well, I will withdraw the --

CHAIRMAN GRAYBILL: Very well, Mr. Barnard's amendment --

DELEGATE BARNARD: -- motion with the understanding that it is not necessary to accomplish what we are trying to do.

CHAIRMAN GRAYBILL: Mr. Barnard's amendment is withdrawn. Now, Mr. Davis, are you in the room?

(No response)

CHAIRMAN GRAYBILL: I want to finish up section thirteen if I can here.

Mr. Brown.

DELEGATE BROWN: I'll make mine in his absence. Mr. President, on line fifteen -- or, page fifteen, after the word, governor, I want to insert the word, and, and delete after legislative assembly -- there would be a period -- and delete and chief justice of the supreme court.

CHAIRMAN GRAYBILL: Very well, Mr. Brown has proposed

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to amend section thirteen, as proposed by the committee, on lines three and four of page fifteen. He wants to add the word, and, between governor and legislative assembly and strike the words, and chief justice of the supreme court. So, it will read as follows: An audit of the investment program shall be conducted at least annually and submitted to the governor and legislative assembly, period. Is that the sense of your amendment?

DELEGATE BROWN: Yes, Mr. President.

CHAIRMAN GRAYBILL: Mr. Brown, you may speak.

DELEGATE BROWN: Mr. President, if this group, the governor, the legislative assembly and the chief justice, found mismanagement in this fund, they might recommend civil action or criminal action and would, in effect, having the chief justice of our supreme court recommending some action against an individual and later may be appealed to that very court, and I don't think that any auditing of any other branch of government should be involved with the judicial, and there's sufficient protection if it's reported to the governor and the assembly.

CHAIRMAN GRAYBILL: Very well, is there discussion?

(No response)

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Brown's amendment to take the chief justice of the supreme court out of the audit process and put an and between governor

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and legislative assembly. So many as shall favor that amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: It's adopted. Mr. Brown -- or Mr. Davis.

DELEGATE DAVIS: Mr. President, I withdraw that amendment I had previously given to you.

CHAIRMAN GRAYBILL: Very well. Are there other amendments to section thirteen? Mr. Heliker, section thirteen?

DELEGATE HELIKER: Mr. Chairman, I move to amend section thirteen, as amended, on page thirty-six, line thirteen, by deleting the words, individuals -- by individuals -- after the word, contributed. Page thirty-six, line thirteen.

CHAIRMAN GRAYBILL: Very well, Mr. Heliker proposes an amendment. It's to the sentence that the minority suggested -- in other words, it's to the Artz amendment. You'll find it on page thirty-six on line thirteen and he would delete the words, by individuals, so that the sentence reads: With the exception of monies contributed to retirement funds, no public funds shall be invested in private corporate capital stock.

DELEGATE HELIKER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: My point here is that although at

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the present time the language as adopted would probably not do any damage to the retirement fund because fifty percent of the contributions -- at least this is true of the teachers retirement system -- are individually contributed funds and I don't think any fund managers would want to put more than fifty percent into common stocks. In the future it is entirely possible that the individual's contributions will be reduced or even eliminated entirely. I don't have the figures before me but I have seen them and it is -- I think it is the case that about half of the state universities and I don't know about the public school systems in this country, that the contributions to the retirement fund are entirely by the employer. This is the trend, clearly, and we may very well get to that point in Montana which would mean that all of the contribution to the retirement fund would be by the state and by the language we have adopted here today, it would mean none of it could be invested in common stocks, which I think would be, as I said before, robbing the people affected of the potential retirement income. And we have, incidentally, sitting on the floor here today a perfect example of that. My good friend, Lucile Speer, who worked for forty years under the teachers retirement system, whose retirement pay today would probably be twice as high if it hadn't been for this constitutional restriction. Now, while I'm on my feet, I would like to ask Delegate Berg to yield to a question.

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CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I yield.

DELEGATE HELIKER: Mr. Berg, Mr. Berthelson brought to my attention that you have some question concerning the legal effect of this sentence, this whole sentence, and I wonder if there is such a -- if there's a problem there which I don't understand, on the basis of what Mr. Berthelson said, that you would elucidate for the benefit of the committee.

DELEGATE BERG: Well, I think what he has reference to is, in my opinion, the limitation of just corporate funds is not adequate. My personal viewpoint on it is that always that public funds have been limited, generally speaking, to bonds, United States Government securities, and investments of that character, and I feel that if you limit it to simply corporate funds you leave it open to the legislature to a very wide open field to them. I felt that if you were going to put limitations on it, you ought to put on the limitations we have lived under most of these years and under which most funds have operated.

DELEGATE HELIKER: All right, I think I see what you are driving at, but there is nothing in this that would require the fund managers to invest in any particular securities as it is written here.

DELEGATE BERG: The only limitation here now is to -- is on corporate stock at the present time.

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DELEGATE HELIKER: Well, there's no limitation on that either, is there? This sentence exempts retirement funds from that restriction.

DELEGATE BERG: That's correct. It would, as you have amended it. It would have only applied to investments of individuals prior to that time.

DELEGATE HELIKER: I didn't hear you.

DELEGATE BERG: As I read the sentence as it is now enacted, it is with the exception of monies contributed by individuals to retirement funds, no public funds shall be invested in private capital stock. Now, I would take that to mean that individuals' investments in private funds could be invested in corporate stock but that public funds could not.

DELEGATE HELIKER: All right, now, if we adopted my -- the amendment I just proposed, in your opinion how would that --

DELEGATE BERG: That would then permit the investment of both -- well, I'm not quite certain that that does what you would like it to do.

DELEGATE HELIKER: Well, that's what I'd like to know.

DELEGATE BERG: I doubt that it would permit the use of public funds -- the investment of corporate funds in private stock if they come either from the public or individuals. That would be my construction.

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DELEGATE HELIKER: Well, as I would read it, this would say that with the exception of monies contributed to retirement funds, so that's a definite exception.

DELEGATE BERG: Yes. I'm sorry, you're correct. I'm sorry. The construction would be, if your amendment succeeds, that retirement funds would be exempt from the prohibition of investment in private corporate capital stock.

DELEGATE HELIKER: Yes.

DELEGATE BERG: That's correct.

DELEGATE HELIKER: O.K., fine.

CHAIRMAN GRAYBILL: Is there further discussion?

(No response)

CHAIRMAN GRAYBILL: If not, the question is on Mr. Heliker's amendment to the Artz amendment, which is now part of section thirteen. He would delete the words, by individuals, on page thirty-six, line thirteen, so that the amendment would now read: With the exception of monies contributed to retirement funds, no public funds shall be invested in private corporate capital stock. This would have the effect of allowing money to be invested in private corporate capital stock in the case of retirement funds, whether contributed by individuals or by the state. So many as are in favor of that amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

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DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it and it's adopted. Are there other amendments to section thirteen?

(No response)

CHAIRMAN GRAYBILL: If not, Mr. Rygg, will you remove section thirteen, as amended?

DELEGATE RYGG: Mr. Chairman, when this committee rises and reports, after having had under consideration section thirteen, as amended, I move it be adopted.

CHAIRMAN GRAYBILL: So many as shall be in favor of this motion say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: The Ayes have it and it's adopted as amended. Now, ladies and gentlemen, I'd like your attention for a minute, especially in the gallery. A purse belonging to Mignon Waterman has been found and is in the chief clerk's office. The Chair wishes to tell the body that we have -- I'm going to recess for a few minutes -- we have before us still, two new -- well, let me ask Mr. Rygg this. What's the committee's proposal on section fourteen?

DELEGATE RYGG: We plan to delete the entire section, Mr. Chairman.

CHAIRMAN GRAYBILL: All right, we have, then, the

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deletion of section fourteen to consider, two new sections to consider, and one reconsideration to consider, at least. Maybe two. The Chair also wishes to point out that I want to finish that, which finishes revenue and finance on time. We were supposed to consider style on legislative today, and we will be three -- actually four articles behind on style and drafting as of Tuesday morning. The Chair does not like to announce a Monday session this late in the game for next Monday, so I won't have a Monday session, but I want everyone to be aware that we're way behind on style and drafting, although we're up to date on the debate portions. Since we're debating Bill of Rights next week and have only two days for it, our up-to-dateness may be short lived. But, the Chair would now entertain, Mr. Murray, a motion to recess for fifteen minutes and then we'll come back and finish up the rest of Revenue and Finance and I'd like you to stay with us, ladies and gentlemen.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move the committee recess for fifteen minutes.

CHAIRMAN GRAYBILL: All in favor say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: So ordered.

(Committee in recess from 4:22 to 4:44 P.M.)

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CHAIRMAN GRAYBILL: The committee will be in session. The committee will be in session. The committee will be in session. Ladies and gentlemen, when the committee recessed we were about to consider section fourteen. Mr. Clerk, read section fourteen, please.

CLERK HANSON: (Reading) Section fourteen, Agricultural Levies: A special levy may be made on livestock and agricultural commodities for the purpose of disease control and indemnification, predator control, livestock inspection and protection, agricultural inspection and protection, livestock and agricultural commodity research and promotion. (End reading) Mr. Chairman, section fourteen.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration section fourteen of Revenue and Finance proposal seven, that it delete the entire article.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: This is the same language that was adopted by the other committee the other night so it is no longer needed in our proposal. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: All in favor of Mr. Rygg's motion that we delete section fourteen when we report, please signify by saying Aye.

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DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: Section fourteen is deleted. Now, we are ready to take up two new sections that have been proposed. First of all, Mr. Kelleher, you have a proposal which we will style section fifteen. May we read it from -- may the Clerk read it?

DELEGATE KELLEHER: Yes.

CHAIRMAN GRAYBILL: Will the Clerk read proposed section fifteen?

CLERK HANSON: (Reading) Mr. Chairman, I move to amend the majority proposal of the Revenue and Finance Committee proposal by adding a new section on page fifteen, line eleven, as follows: Section fifteen. The legislature shall enact no additional sales or use tax other than those in force on December 31, 1971, provided that it may increase such taxes in existence on that date. Signed, Kelleher. (End reading)

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, the sales tax usually starts at two percent and then it usually goes up to seven -- six or nine -- seven percent, as it has in New York and the Soviet Union has went up as high as a hundred percent. It was an issue in the 1968 campaign. It helped elect the present governor and then it was again resurrected last Novem-

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ber and defeated by a majority of almost three to one. I would like to dispose of it once and for all by outlawing it in the Constitution and at the same time guarantee support for the Constitution. In conclusion, the only objection I have heard to a unicameral legislature is the ungrounded fear that it might pay us a sales tax. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I would like to resist this addition to Revenue and Finance. I really don't think it's anything we should write into a constitution. We are supposed to be planning one for the needs of the state for years ahead and I don't believe we could possibly foresee that there should never be any other sales or use tax than is in force right now, so I would resist it and I hope the committee does, too. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: The Chair is having a hard time trying to see who wants to speak and who wants to sit down. Is there any further discussion?

(No response)

CHAIRMAN GRAYBILL: Mr. Kelleher, do you want to close?

DELEGATE KELLEHER: No. Could I have five seconds, please?

CHAIRMAN GRAYBILL: Very well, Mr. Kelleher has asked for a roll call vote. The issue is on Mr. Kelleher's proposed

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section fifteen. Members of the committee, you have before you Mr. Kelleher's proposed section fifteen and his motion that when this committee does arise and report, after having had under consideration his proposed section fifteen, that it recommend the same be adopted. So many as are in favor, vote Aye on the voting machines, and so many as are opposed, vote No. Have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the ballot.

Aasheim	-	Nay	Berthelson	-	Nay
Anderson, J.	-	Nay	Blaylock	-	Nay
Anderson, O.	-	Absent	Blend	-	Nay
Arbanas	-	Excused	Bowman	-	Nay
Arness	-	Nay	Brazier	-	Nay
Aronow	-	Nay	Brown	-	Absent
Artz	-	Nay	Bugbee	-	Nay
Ask	-	Nay	Burkhardt	-	Nay
Babcock	-	Nay	Cain	-	Nay
Barnard	-	Nay	Campbell	-	Nay
Bates	-	Nay	Cate	-	Absent
Belcher	-	Excused	Champoux	-	Absent
Berg	-	Nay	Choate	-	Nay

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1	Cross	-	Aye	Jacobsen	-	Nay
2	Conover	-	Nay	James	-	Nay
3	Dahood	-	Absent	Johnson	-	Nay
4	Davis	-	Nay	Joyce	-	Nay
5	Delaney	-	Nay	Kamhoot	-	Nay
6	Driscoll	-	Nay	Kelleher	-	Aye
7	Drum	-	Nay	Leuthold	-	Nay
8	Eck	-	Nay	Loendorf	-	Nay
9	Erdmann	-	Nay	Lorello	-	Absent
10	Eskildsen	-	Excused	Mahoney	-	Nay
11	Etchart	-	Nay	Mansfield	-	Nay
12	Felt	-	Excused	Martin	-	Nay
13	Foster	-	Nay	McCarvel	-	Aye
14	Furlong	-	Nay	McDonough	-	Nay
15	Garlington	-	Nay	McKeon	-	Aye
16	Gysler	-	Nay	McNeil	-	Nay
17	Habedank	-	Nay	Melvin	-	Nay
18	Hanson, R. S.	-	Nay	Monroe	-	Aye
19	Hanson, R.	-	Nay	Murray	-	Nay
20	Harbaugh	-	Nay	Noble	-	Nay
21	Harlow	-	Aye	Nutting	-	Nay
22	Harper	-	Nay	Payne	-	Absent
23	Harrington	-	Absent	Pemberton	-	Nay
24	Heliker	-	Aye	Rebal	-	Nay
25	Holland	-	Excused	Reichert	-	Nay

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Robinson	-	Nay	Studer	-	Absent
Roeder	-	Nay	Sullivan	-	Nay
Rollins	-	Nay	Swanberg	-	Nay
Romney	-	Aye	Toole	-	Nay
Rygg	-	Nay	Van Buskirk	-	Absent
Scanlin	-	Nay	Vermillion	-	Nay
Schiltz	-	Absent	Wagner	-	Nay
Siderius	-	Aye	Ward	-	Nay
Simon	-	Nay	Warden	-	Nay
Skari	-	Nay	Wilson	-	Nay
Sparks	-	Absent	Woodmansey	-	Nay
Speer	-	Nay	Mr. Chairman	-	Nay

CLERK HANSON: Mr. Chairman, nine Delegates voting Aye, seventy-four voting No.

CHAIRMAN GRAYBILL: Seventy-four having voted No and only nine having voted Aye, Mr. Kelleher's motion fails. Mr. Aasheim, you have sent to the Chair a proposed amendment which is out on the desks and we've changed Mr. Aasheim's proposed amendment to a section sixteen instead of a section fifteen.

Mr. Aasheim.

CLERK HANSON: Mrs. Cross is up.

CHAIRMAN GRAYBILL: Yes, Mrs. Cross. Excuse me. I couldn't see.

DELEGATE CROSS: Mr. Chairman, I would like to explain my vote. I think that Mr. Kelleher deserves support

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some time. He has supported me, in effect, many times so this time, Bob, I wanted to support you, though in theory I think your motion was probably not too sensible.

(Laughter)

CHAIRMAN GRAYBILL: Well, at least the last word of your statement, Mrs. Cross, was straight to the point.

(Laughter)

CHAIRMAN GRAYBILL: Very well, you have before you on your desk the proposed amendment by Mr. Aasheim, an additional section. Please style it sixteen, and Mr. Aasheim, may we read it?

DELEGATE AASHEIM: Yes.

CHAIRMAN GRAYBILL: Will the Clerk please read proposed section sixteen?

CLERK HANSON: (Reading) Mr. Chairman, I move to amend Revenue and Finance majority proposal, page fifteen, line eleven, by adding a new section sixteen to read as follows: The rate of taxation on real and personal property for the operation of state government shall not exceed two mills on each dollar of valuation, unless a proposition to increase such rate, specifying the rate proposed and the time during which such rate shall be levied shall have been submitted to the people at a general election and shall have received a majority of all votes cast for and against it at such election. Signed, Aasheim. (End reading)

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CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman, members of the delegate assembly, yesterday, I believe it was -- it seems like a long time ago when we first started this article -- and I want to say that this committee has done a tremendous job. It's likened to an oak tree. It has grown tall and straight and well, with very little pruning. Now, I would like to do just a little grafting and make the tree perfect. Yesterday morning we were talking about equalization and I said I believed in equalization. I think we need it on a state level in order to prepare for the future and also to take care of the present because we have a foundation program that is predicated on equalization. I have included here a section which is practically verbatim to the current Constitution and that is to guard, protect the property owner from the wiles of an over-zealous legislature. I have confidence in it -- in them, usually, but they have moments of weakness. They're human, and I propose this amendment to give protection to the property owner from a legislature that is in search of funds for the operation of state government. Now, please note that we are talking about state government. I feel very sincerely and very, very much the need to protect the property tax levies for local purposes. I suppose you are all cognizant of the fact that cities and counties and school districts pretty much depend on property for their revenue. Towns and counties pretty much entirely so.

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And, it is the prerogative of the people to vote themselves taxes on these levels. I think it should be that way. Consequently, I, with this amendment, to maintain this amendment as at present, I'm asking to reinstitute it in this new Constitution. Now, at first I had -- I was warned that if you put this in now with the California case, the Serrano case, facing us that we must have equalization, and a similar case in Texas and in other states. Possibly the one in Texas is more pertinent to us than the California case. But, we do not know if these cases are going to apply to Montana. Let's not be afraid of this California bear until we see the whites of his eyes. Let's not worry about this Texas longhorn. If he comes, we'll dehorn him, because we don't know but what our present foundation program will not comply with the standards which the federal courts might impose. So, let's not cry wolf now and leave the doors open. However, I have left the doors open. In the last sentence you will find that if the legislature finds itself in a bind and needs more money under this equalization which we think might come under these federal cases, the legislature can then go to the people and ask for this money. I think this is democratic. I think it will protect the property owner which I think that he is going to ask for in this new equalization program we have.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I seem to find it necessary to resist

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the motion of my good friend, Aasheim. I really do believe if we added this section to our proposal, we would probably be overturning much of what we have done in the last couple of days. Naturally, I would like to know, too, that we would never need over two mills but regardless of the California bear and the Texas longhorn, I think we will have to be prepared for the eventuality and I can't see where we would be preparing ourselves for that if we should lock this two mill levy in the Constitution again. Actually, when we were discussing other articles in our committee, this two mill levy, of course, came up and we decided that if we were going to write a Constitution for the future, one that would serve Montana for years to come, there would be no way of retaining this restriction. I admit we don't know what the courts will say about equalization, but I do believe we agreed that we would have to consider state financing of schools and if we are to do that, I don't see how we could do it with this limitation, so I would resist the addition to the proposal. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, the Serrano case in California is still an uncertain quantity but the people of California themselves have, through initiative petitions and will have on the November ballot a proposition which will limit property tax levies. I think that the people themselves, through their own power, will decide what they'll do and since

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we've been talking about the fact that we think the legislature is the people's representative, I think that perhaps we should not close any options.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. President, I agree with Mr. Martin. We shouldn't close any options and really that's the whole theory of the Revenue and Finance section, that the options should not be closed. As we stated in the beginning, three basic taxes, which is property, income and excise taxes -- this was somewhat to the same limitation that Mr. Kelleher just proposed, that there should be no sales tax enacted by the state, and that put that in the Constitution. Now, I realize that local government is supported to a great extent by property taxes, but within the time of this Constitution it could be very well reversed that local government can be very well and better supported by some other type of tax than property tax. By limiting this, then, we again invite some law suit as to what is meant by operation of state government. It means one thing to me, it means one thing to somebody else. Operation of state government could mean schools. The state is obligated to operate schools and furnish schools to the children but, more importantly, if we close off avenues of taxation we really put the burden of taxes on the other avenues that we have. If we limit this to two mills and we assume that two mills does not go into education -- to raise the eighty million

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dollars that is now raised each year by property taxes for the support of schools, and assuming there is no local taxes for the support of schools, if we went the excise way, which is essentially the sales tax, we may need to have an eight percent sales tax. If we went the income tax way and not the excise, we'd have to raise the income tax one and one-half times higher than what it is now to finance schools under Serrano versus Priest, and we do have other law suits pending such as in welfare which I'm not so sure is a -- such a dominant public interest as education, but they say, well, it isn't going to apply here but if anyone wants to read the case of Serrano versus Priest and how they discuss the different valuations in the taxing districts and how the state of California had a public foundation program to equalize between their schools, there is so much similarity between the California plan and the Montana plan of the foundation program. It's practically identical. And, to say that we'll wait until it comes is not being very forward thinking -- forward thinking about the thing because you don't know what the people are going to do. You put it up to a vote but there's nothing in the Constitution now that restricts the people from voting on whether or not they want to increase the sales tax or voting on whether or not they want to increase the income tax. What we are trying to do under our whole section is to relieve the thing from the burdens of the past so that the financing of the state can be solved in a

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much more logical manner, and to give the avenues open to solving those problems in the future. Thank you.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I rise to support Mr. Aasheim's amendment. I look at local government. It allows city-county revenue sharing. I've read the Great Falls Tribune over the last year and see how their city council says, well, now, if we could only get city-county revenue sharing from the state, all of our problems would be solved. I feel that some place in this Constitution we have to have some kind of a limit on something. We've gotten by for years with this two mill levy for state government. If we're going to in the future need it for our school systems, I agree with Mr. Aasheim that we will know in plenty of time so we can go ahead and put it to a vote of the people, and if that's necessary, then I'm sure it will be approved. But, there are just too many loopholes that are left open. No matter where you read, whether it's from the President on down, everybody says that property taxes are too high and yet we want to go out and leave the door wide open. As this state grows, there's going to be lots less people who are property tax payers, and a lot more who are not. Or, if they are property tax payers, they are very small property tax payers and I feel that if we don't get some kind of a limit someplace on some of this, we may not have too many people in years ahead that are going to own their property to pay the

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taxes on it, so I certainly support Mr. Aasheim's amendment.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: I forgot one point, Mr. President. Relative to property taxes on a statewide basis, if you do go to a -- and you can't levy a property tax statewide -- and you eliminate the property taxes that are now levied for schools, which is about, on the average, two-thirds of what property taxes we pay, who are going to be the biggest benefactors of that elimination? The only way now that we are taxing transportation companies and making them pay their fair tax is by a property tax. They don't pay any state license tax other than the fifty dollar minimum, and the big beneficiaries of a two-thirds reduction in the tax, if we can't do it on a statewide basis, will be the railroads and the transportation companies and anybody else that pays a substantial portion of their taxes by property and do not pay it by income or license tax to the state.

CHAIRMAN GRAYBILL: Mr. Aasheim, do you -- Mr. Mahoney, do you want to speak?

DELEGATE MAHONEY: Mr. Chairman, I rise in support of Mr. Aasheim's motion. Now, what you're doing when you leave it the way the committee has done, they won't ever have to vote on the university system again. They can just go out and put that on. Then, if we go out here now at the present time, we have -- now, we haven't got a statewide property tax for schools.

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They say that before you can share in the foundation program you must have this levy--fifteen mills, I believe it's for the grade schools and -- no, it's fifteen and twenty-five. One is for high schools and one is for grade. This is before you can share. This is how it's being done. Now, if we go out here and take all the limits off, like the committee has said, then you won't have to worry about that. We will come out with a statewide property tax of probably forty mills, fifty mills, and it will be divided up, up here in the state superintendent's office, or some other department. I'm not sure where it will be because we may decide to create a new department, and this is when you lose your local control. Now, the people, I'll admit, are not voting for these levies when you get above this natural -- this forty mills. They're starting to question it. Some districts are having to go out three and four times to get this above what is necessary. This is a protest of the people that they don't like what's happening. Now, some of these districts don't have a bit of trouble. They just go right down and vote them because those people in those districts have decided they like the way that their school system is being run. Now, if we have this, we will find this automatically put on on property and we will then have the people with no say. I like to just let the people vote on some of these things, after beyond a certain point, and I think it's good for them. If they don't like -- and they've worried a number of times

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about the university system -- boy, I've seen them worry about it, the six mills. Now, if this happens, we'll have to worry about it. I'll admit the university system can go, and we've heard them complain here about the last day, about the highway department, and maybe then they won't have any complaints at all at the university system because they can't get at them. Now, this is what we're doing and if we don't have some limit on here, this will be the keenest thing in the world to put it all back on property. Just watch it.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, apropos of the matter, I think that the trouble is the assessment system. Taking the railroads, for example, the railroad assessment in Montana in 1959 were a hundred and sixty-eight million, two hundred and seventy-six thousand, two -- seven hundred and twenty-two. This is for -- this is for statewide railway assessments. Not county. The 1968 assessment was one hundred twenty-four million, seven hundred and six thousand. In the ten years, the assessments shrunk forty-four million dollars. If we had that forty-four millions on the assessment books, and the same thing goes for other corporations, we wouldn't be bothered so much about our property tax yields.

CHAIRMAN GRAYBILL: Very well, Mr. Aasheim, do you want to close?

DELEGATE AASHEIM: I appreciate --

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CHAIRMAN GRAYBILL: Wait a minute, wait a minute, Mr. Aasheim.

Mrs. Cain.

DELEGATE CAIN: May I ask Mr. Aasheim a question?

DELEGATE AASHEIM: You may.

DELEGATE CAIN: Mr. Aasheim, if Mr. Eskildsen's amendment of the other day had passed, would you have brought this?

DELEGATE AASHEIM: Well, now, I'll have to confess I didn't pay too much attention to that one. I was concerned about the majority report. I thought that was fine. I didn't really pay much attention to it, so I don't know what I would have done.

DELEGATE CAIN: Thank you, Mr. Aasheim. I think what we are doing here is considering -- we are reconsidering our action of the other day.

CHAIRMAN GRAYBILL: Mr. Aasheim, do you want to -- oh, Mr. Skari.

DELEGATE SKARI: Mr. President, I think that maybe this is rather an important vote and I'm not too sure about it. It seems that it's the central idea of the committee's recommendation here -- the committee report is to prepare for a shift here from the local funding of the education to state funding because of the Serrano-Priest decision and this Texas decision, and I get -- as I understand the report, that is what they intend here. Would Mr. McDonough yield to a question,

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please?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE SKARI: Mr. McDonough, what about the financing of construction of school buildings, now, under this Serrano-Priest decision. Does this decision just apply to the funding of the expenses of running the schools? What about the buildings and this sort of thing? Will we still vote locally if this applies in Montana?

DELEGATE McDONOUGH: Well, Serrano versus Priest opens up a whole bag of worms or cats or whatever you might call it. Now, what happened there was in Beverly Hills they had a taxable district whereby three mills might raise a hundred thousand dollars, and they have voted levies just like we do over and above the foundation program. They had another district where three mills might only raise six thousand dollars. In the Beverly Hills district, they spent fifteen hundred dollars per high school student; the other district could only afford with three times as many mills to spend only about five hundred dollars per high school student. Now, that's what they threw out and said was unconstitutional, and it's logical it is. I mean, you can take logic any other way you look at it, but that is on the equal protection clause of the Constitution and that's why it was thrown out. Now, if they go to the point that the facilities and buildings furnished for education

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also have to be somewhat equal, then you get into the same thing on buildings. Now, it's possible that -- I think under buildings, and this is just a half-way thought about what they're talking about -- it's possible that buildings could be financed in part by the district and financed in part by the state in order to equalize it so each child has the proper facilities in which to be educated. I don't know what the Serrano versus Priest is going to do beyond the original point that we made. I don't know, but it raises grave problems all up and down the line that the state is required to furnish an equal opportunity to education to each child in the state, and that's what it essentially says.

DELEGATE SKARI: Thank you, Mr. McDonough.

Mr. President.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: I guess I would appreciate hearing from some of the other members of the committee on this, too. I would like to keep local control of schools, but I'd just like to hear more about it. I think we're going to a vote here a little bit too quickly. Maybe some of them would comment on this.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. President. Mr. Skari, I would like to call your attention, and the attention of the other Delegates to the comments in the education article. Not to

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prolong this discussion, but on page ten of that article, the majority report, sets forth some of the reasons why this equalization process will have to take place. Just reading a few lines from that report: Montana's school financing system is similar to those declared unconstitutional in the states where challenges have been made, and the same vast discrepancies in tax burdens and educational support exist in Montana as exist elsewhere. Then it quotes a recent study done last month in our superintendent's office which shows that Montana's school district wealth per ANB varies as much as a ratio of ten thousand to one, and this is the reason that a change has to come in the method of financing schools.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: I'd like to point out to the Delegates that Mr. Aasheim's proposal does not close the door in any way. If there is a need to exceed the two mill levy, then the proposition can be placed upon the ballot and the people will have an opportunity to vote upon it. It will not require any amendment to the Constitution, merely a vote by the majority of the people. This is a matter that I think we should retain the control of our expenditures with the people and this is an important enough matter that the electorate should have a say in it, should have a voice in it, and I, as I stated during recess and conversation, I don't think that any prudent person signs a check in blank and hands it to somebody to do

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with as they see please -- as they may so please to do. I like to be a little bit prudent about these things and I don't think it's going to hamstring the operation of government or the school foundation program, or anything else the federal courts might order us to do, if we can say to that court, our Constitution does not allow us to do it until the people pass upon it, and that may be a very important safeguard to all of us in Montana. Thank you.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, first I would like to point out to Mrs. Cain that Mr. Aasheim did not support Mr. Eskildsen yesterday.

DELEGATE CAIN: I know.

DELEGATE GYSLER: Oh, O.K. And, I'd also like to say this, that if there was something written in along with this two mill that said property tax could -- above that could only be used for the education system, I would certainly go along with it on that basis, but I want to remind everybody that when you leave off all restrictions, you're not just saying that we're leaving the door open to school financing.

CHAIRMAN GRAYBILL: Mr. Joyce is next.

DELEGATE JOYCE: Mr. Chairman, it seems to me that this proposal has the same merit as Delegate Kelleher's. We just gave a blank check to the legislature to put on a twenty percent sales tax. They aren't going to do that. I don't like

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property taxes any more than anyone else but it seems to me what we've done in this revenue thing is we've opened up the avenue so the people who come after us can legitimately finance the state as prudence dictates from time to time, and I don't believe in putting it -- ten mill property tax levy on any more than anybody else, and nobody is saying that they will. All we are doing is, we're leaving it to future generations to solve the problems as they arise and the whole purpose of the Constitutional Convention was to free the legislature so they could meet the problems as they arise. And, I might say further, it seems to me the arbitrary restrictions we wrote into the Montana Constitution are the reason the government went to Washington. The states had their hands tied so they couldn't meet them on the local level and so the social forces just bypassed the state and went to Washington, and I think this has the same merit as Delegate Kelleher's proposition that we'll never have a sales tax and I'm again willing to free the Constitution so that the problems that arise in the future can be met by reasonable men in the future.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President, I rise to support Mr. Aasheim's motion. Probably this will do him more harm than good.

(Laughter)

DELEGATE WILSON: But, I think we have placed a lot

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of emphasis in this Convention on the people's right to vote. We have talked about giving the young people a right to vote. Don't you think they should have the right to determine what indebtedness they will have to pay off. I can look around here in this Convention and I see several people like myself that you can put on quite an indebtedness and we won't be around to pay it off, but these young people will. And, I think this is something that we should think about. We are trying to provide a little protection for the people and they can come in here and vote these things in if the need arises. We are all talking about the California case, the Texas case, and so on -- about the schools. It hasn't arrived here yet. It's not here in Montana and when it does come, if it ever does, which it probably will, we'll have time enough to decide -- the people will -- how they want to finance the school system. I support Mr. Aasheim. Let's give the people a little right to vote.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. President, as the years have gone by and living on a ranch, I've heard remarks made by neighbors that this is one of the fairest tax that was ever levied on the people. Two mills every year and it brings in a million and three-quarters dollars and it hurts no one, and then the people, if they have to go beyond that, can vote. Thank you.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, fellow Delegates, I

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rise in opposition. As I see it, the two mills could seriously restrict the state government and, in fact, the legislature. If the case does come, and it will, it could be taken completely out of the peoples' hands, completely out of the legislators' hands, and it could be put into the court. The court would then dictate to the legislature and to the people of the state of Montana how it would be funded and how the funds would be derived and divided. I think you overwhelmingly supported the majority position when it was up before and I would request that you do the same now. Thank you.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, we're talking here in a vein as if we are precluding the people from voting. Mr. Wilson said eighteen-year-olds would not have a chance to vote. Of course, they'll have a chance to vote on a statewide property tax levy, just as they do on local levies. This doesn't preclude people from voting on the levies; the fact that they are statewide or whether they're local would not preclude anyone from voting on them.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, I was just going to say it's rather arbitrary that we would have the people vote on a property tax and not on the income tax or license tax or any of the other taxes, and also that if we followed the logic of Mr. Aasheim's proposal to perhaps an inevitable conclusion, we

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might have the people vote on every appropriation and every budget that the legislature determines.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Aasheim, could I ask you a question, please?

DELEGATE AASHEIM: (No audible response.)

DELEGATE BABCOCK: Mr. Aasheim, could I ask you a question, please?

DELEGATE AASHEIM: Yes, ma'am.

DELEGATE BABCOCK: Does this happen to take the place of the two mill tax that the governor can impose in the case of an emergency?

DELEGATE AASHEIM: It's the same.

DELEGATE BABCOCK: It's the same thing.

CHAIRMAN GRAYBILL: Is there any more discussion?

(No response)

CHAIRMAN GRAYBILL: Mr. Aasheim, do you want to close?

DELEGATE AASHEIM: I surely appreciate your restraint in limiting the discussion and I have to answer a few comments. Mrs. Cain, now I have read Mr. Eskildsen's proposal and it wouldn't have made any difference, really, because his was in a different area on the state board of equalization and local county commissioners, so it would not make any difference. Now, then, I'm going to take these last comments first. Now, Mr. Furlong says the court might overrule us in the Constitution.

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Is the court above the Constitution? Now, and then we had the comment that we don't ask the people to vote on sales taxes. Yes, we do, but not income tax. Now, I'll tell you, you let the local governments levy sales taxes and income taxes and I'll withdraw my motion. But, as I reminded you a while ago, the local governments are restricted to property tax so that's why I'm asking a restriction on the state level. I can't share Mr. Wilson's pessimism. I'm optimistic, and I'm glad to have your support, Mr. Wilson. You'll win one of these times. Now, this comment was made about one school district having so much more wealth than another. It's true. There is this discrepancy. There are discrepancies all over the place. I might drive a Volkswagon and Mr. Wilson might drive a Continental. I'm not trying to equalize that, but we are trying to equalize it for school purposes. We're trying desperately but it's pretty difficult, but we are doing it to quite an extent and the state of Montana is now putting out about thirty million dollars for equalization purposes through the income tax and other sources of revenue. The local people are paying property tax. That's where the schools are now getting their money -- most of their money. We know that, so we do have the use of the property tax for school purposes. Now, you question again my questioning the integrity of the legislature. I say that the legislature is made up of people and I know how they succumb to pressures because they are human and they are going to

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say, well, sure, if we can put on two mills this year and then we need about two million dollars, so we'll put on another mill next year -- it won't hurt anything, they won't notice it. And so next year another mill and another mill. There's no limit. The only ones who cry are the people and they cry in vain sometimes as long as there are no constitutional limitations. Now, Mr. Martin, you said wait and let the people do this. Can you imagine -- someone said that we should have a choice and let -- there isn't enough tax on property now. Heavens above, aren't we living -- aren't we realizing that property is bearing about all the load it can? And now, we want to give it some more if we possibly can? Now, Mr. Martin, did it ever occur to you that people get so sick of property taxes that they might pass an intiative and say there shall be a ten mill restriction, and then you've got it tied in, and you've got it tied down. Now you haven't. You go to the people and you say, we need a few dollars here so will you vote it for us. So, don't forget that little thing. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Aasheim's proposed new section sixteen which has the effect of putting into the Constitution the two mill levy. I don't think I need to read it. I take it you want a roll call vote. So many as shall be in favor of Mr. Aasheim's section sixteen on putting the two mill levy into the Constitution, vote Aye, and so many as opposed, vote No.

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DELEGATE BRAZIER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: I rise to explain my failure to vote, and it arises because under our rules we do not permit pairing in the Committee of the Whole. Your secretary, Mrs. Bowman, had to catch an airplane and we got to comparing notes and as a courtesy, I have withheld my vote.

CHAIRMAN GRAYBILL: Very well, have all the Delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the vote, please.

Aasheim	-	Aye	Belcher	-	Excused
Anderson, J.	-	Aye	Berg	-	Nay
Anderson, O.	-	Aye	Berthelson	-	Nay
Arbanas	-	Excused	Blaylock	-	Nay
Arness	-	Absent	Blend	-	Nay
Aronow	-	Aye	Bowman	-	Absent
Artz	-	Aye	Brazier	-	Absent
Ask	-	Absent	Brown	-	Nay
Babcock	-	Aye	Bugbee	-	Nay
Barnard	-	Aye	Burkhardt	-	Nay
Bates	-	Aye	Cain	-	Nay

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1	Campbell	-	Nay	Harper	-	Nay
2	Cate	-	Absent	Harrington	-	Absent
3	Champoux	-	Absent	Heliker	-	Nay
4	Choate	-	Aye	Holland	-	Excused
5	Conover	-	Absent	Jacobsen	-	Nay
6	Cross	-	Aye	James	-	Nay
7	Dahood	-	Nay	Johnson	-	Aye
8	Davis	-	Aye	Joyce	-	Nay
9	Delaney	-	Aye	Kamhoot	-	Aye
10	Driscoll	-	Nay	Kelleher	-	Nay
11	Drum	-	Absent	Leuthold	-	Aye
12	Eck	-	Nay	Loendorf	-	Nay
13	Erdmann	-	Aye	Lorello	-	Absent
14	Eskildsen	-	Excused	Mahoney	-	Aye
15	Etchart	-	Aye	Mansfield	-	Aye
16	Felt	-	Excused	Martin	-	Nay
17	Foster	-	Nay	McCarvel	-	Nay
18	Furlong	-	Nay	McDonough	-	Nay
19	Garlington	-	Nay	McKeon	-	Nay
20	Gysler	-	Aye	McNeil	-	Aye
21	Habedank	-	Nay	Melvin	-	Nay
22	Hanson, R. S.	-	Aye	Monroe	-	Nay
23	Hanson, R.	-	Nay	Murray	-	Nay
24	Harbaugh	-	Nay	Noble	-	Aye
25	Harlow	-	Nay	Nutting	-	Aye

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Payne	-	Absent	Sparks	-	Absent
Pemberton	-	Aye	Speer	-	Nay
Rebal	-	Aye	Studer	-	Absent
Reichert	-	Nay	Sullivan	-	Nay
Robinson	-	Nay	Swanberg	-	Aye
Roeder	-	Nay	Toole	-	Nay
Rollins	-	Nay	Van Buskirk	-	Absent
Romney	-	Nay	Vermillion	-	Aye
Rygg	-	Nay	Wagner	-	Aye
Scanlin	-	Nay	Ward	-	Aye
Schiltz	-	Absent	Warden	-	Nay
Siderius	-	Nay	Wilson	-	Aye
Simon	-	Aye	Woodmansey	-	Nay
Skari	-	Nay	Mr. Chairman	-	Nay

CLERK SMITH: Mr. Chairman, thirty-two voting Aye, forty-eight voting No.

CHAIRMAN GRAYBILL: Forty-eight having voted No and only thirty-two voting Aye, Mr. Aasheim's motion is defeated. Mr. McDonough, would you tell me again the name of the California case? I just need to write it down here. Is it something versus Serrano?

DELEGATE McDONOUGH: Serrano, S-e-r-r-a-n-o versus Priest -- Priest, the same as clergyman. However, it was an Irishman that was one of the state officials.

CHAIRMAN GRAYBILL: Very well. All right, there are

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no other new sections that I know of. Mr. Johnson, you have a motion to reconsider. Will you please state your motion, or would you like us to read your motion?

DELEGATE JOHNSON: You may read it.

CHAIRMAN GRAYBILL: All right, would the Clerk please read Mr. Johnson's motion to reconsider.

CLERK SMITH: (Reading) Mr. Chairman, I move to reconsider section five's adoption in order to delete the sentence of the Revenue and Finance Committee proposal on page twelve, lines twenty-five and twenty-six: Certain classes of property may be exempt from taxation.

CHAIRMAN GRAYBILL: All right, Mr. Johnson, your motion is in error; it's page eleven. On page eleven, lines twenty-five and twenty-six, you will find the sentence, certain classes of property may be exempt from taxation. Mr. Johnson, do you want to explain briefly your motion?

DELEGATE JOHNSON: Yes, Mr. Chairman. Thank you. Having voted on the prevailing side and then studying this some more last night, I've become very concerned over this particular sentence--certain classes of property may be exempt from taxation. I'm afraid that I must have been lulled yesterday to vote for this because this opens the door, I think -- well, for instance, the Big Sky complex, resorts of any kind in Montana, any special class of property that might win an exemption by lobbying or other manner, and I can't see that this does any-

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thing in here except leave the door open for that type. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: All right, Mr. Johnson wants to reconsider-- having voted on the prevailing side, wants to reconsider section five for the purpose of taking out the sentence on lines twenty-five and twenty-six. Is there discussion of the motion to reconsider, and please be to the point?

Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. Well, I would like to see the committee reconsider this because if this were reconsidered and that phrase was taken out, I would like to see us adopt a -- some language that would exempt household goods and furniture, wearing apparel and other personal property and also solvent credits, and in our legislative council subcommittee study, which Mr. Berthelson referred to earlier in the debate, our study indicated that these two types of property should be exempt from taxation. The solvent credits we found were practically impossible to administer property tax on and -- am I getting off the subject here?

CHAIRMAN GRAYBILL: Well, I just wanted you to stay on the subject of reconsideration. You can tell them what you are going to do but I don't want to get a big debate going until we've decided whether to reconsider.

DELEGATE ETCHART: Yes. Well, this is -- if we could reconsider it, this would make a change which would -- the

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legislative council has concluded in the past should be done. Thank you.

CHAIRMAN GRAYBILL: Is there other discussion of the motion to reconsider?

(No response)

CHAIRMAN GRAYBILL: Very well, you have the motion before you, the motion of Mr. Johnson that this committee reconsider its action on section five, page eleven, for the purpose of considering the sentence on lines twenty-five and twenty-six. Anybody want a roll call?

UNIDENTIFIED DELEGATE: Yes.

CHAIRMAN GRAYBILL: All right, the vote will be by roll call. So many as are in favor of reconsidering, vote Aye; so many as are opposed, vote No. Have all the Delegates voted?

UNIDENTIFIED DELEGATE: No.

CHAIRMAN GRAYBILL: Does any Delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the ballot.

Aasheim	-	Aye	Artz	-	Aye
Anderson, J.	-	Aye	Ask	-	Absent
Anderson, O.	-	Nay	Babcock	-	Aye
Arbanas	-	Excused	Barnard	-	Aye
Arness	-	Absent	Bates	-	Aye
Aronow	-	Aye	Belcher	-	Excused

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1	Berg	-	Nay	Felt	-	Excused
2	Berthelson	-	Nay	Foster	-	Nay
3	Blaylock	-	Nay	Furlong	-	Nay
4	Blend	-	Nay	Garlington	-	Aye
5	Bowman	-	Absent	Gysler	-	Nay
6	Brazier	-	Absent	Habedank	-	Aye
7	Brown	-	Nay	Hanson, R. S.	-	Aye
8	Bugbee	-	Nay	Hanson, R.	-	Aye
9	Burkhardt	-	Nay	Harbaugh	-	Nay
10	Cain	-	Nay	Harlow	-	Nay
11	Campbell	-	Nay	Harper	-	Nay
12	Cate	-	Absent	Harrington	-	Absent
13	Champoux	-	Absent	Heliker	-	Nay
14	Choate	-	Aye	Holland	-	Excused
15	Conover	-	Absent	Jacobsen	-	Aye
16	Cross	-	Aye	James	-	Aye
17	Dahood	-	Aye	Johnson	-	Aye
18	Davis	-	Aye	Joyce	-	Nay
19	Delaney	-	Absent	Kamhoot	-	Aye
20	Driscoll	-	Nay	Kelleher	-	Nay
21	Drum	-	Absent	Leuthold	-	Aye
22	Eck	-	Nay	Loendorf	-	Nay
23	Erdmann	-	Absent	Lorello	-	Absent
24	Eskildsen	-	Excused	Mahoney	-	Aye
25	Etchart	-	Aye	Mansfield	-	Absent

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Martin	-	Nay	Scanlin	-	Nay
McCarvel	-	Nay	Schiltz	-	Absent
McDonough	-	Nay	Siderius	-	Nay
McKeon	-	Nay	Simon	-	Nay
McNeil	-	Nay	Skari	-	Aye
Melvin	-	Nay	Sparks	-	Absent
Monroe	-	Nay	Speer	-	Nay
Murray	-	Nay	Studer	-	Absent
Noble	-	Nay	Sullivan	-	Aye
Nutting	-	Aye	Swanberg	-	Aye
Payne	-	Absent	Toole	-	Nay
Pemberton	-	Aye	Van Buskirk	-	Absent
Rebal	-	Aye	Vermillion	-	Nay
Reichert	-	Nay	Wagner	-	Nay
Robinson	-	Nay	Ward	-	Nay
Roeder	-	Nay	Warden	-	Nay
Rollins	-	Nay	Wilson	-	Aye
Romney	-	Nay	Woodmansey	-	Nay
Rygg	-	Nay	Mr. President	-	Nay

CLERK SMITH: Mr. Chairman, twenty-nine voting Aye, forty-eight voting No.

CHAIRMAN GRAYBILL: Forty-eight Delegates having voted No and twenty-nine voting Aye, the motion to reconsider fails. Mr. Loendorf, do I understand you want to withdraw your motion to reconsider?

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DELEGATE LOENDORF: Yes, Mr. President.

CHAIRMAN GRAYBILL: Very well, are there other motions to reconsider matters contained in the Revenue and Finance proposal?

(No response)

CHAIRMAN GRAYBILL: If not, I think the committee is ready to rise and report on the Revenue and Finance proposal.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, before doing so, I would move that the committee pass consideration of all other business on general orders for this sitting.

CHAIRMAN GRAYBILL: Very well, that means we're going to pass other business, including the legislative style and drafting, on to Tuesday. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that the committee rise and finally report.

CHAIRMAN GRAYBILL: The motion is that the committee rise and finally report. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

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(President Graybill presiding over Convention.)

PRESIDENT GRAYBILL: The Ayes have it. Now, while the report is being considered, I would like you to find on your desks Resolution Number Eleven, which we will take up in the Convention after we have acted on the committee report. Will the Convention be in order? Will the Clerk read the title of the committee report?

CLERK SMITH: (Reading) March 4, 1972. Mr. President, we, your Committee of the Whole, having had under consideration Report Number Seven of the Committee on Revenue and Finance, move that the committee rise and report.

PRESIDENT GRAYBILL: Signed, Graybill.

CLERK SMITH: Signed, Graybill, chairman.

PRESIDENT GRAYBILL: Very well, does anyone wish the Committee of the Whole report read in its entirety?

DELEGATES: No.

PRESIDENT GRAYBILL: Very well.

Mr. Murray.

DELEGATE MURRAY: Mr. President, I move that we adopt the Committee of the Whole report and refer Proposal Number Seven to the Committee on Style and Drafting.

PRESIDENT GRAYBILL: You have heard Mr. Murray's motion to adopt the Committee of the Whole report and refer the Revenue and Finance proposal to Style and Drafting. All in

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favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

PRESIDENT GRAYBILL: The Ayes have it and so ordered.

Mr. Murray.

DELEGATE MURRAY: Mr. President, I move we revert to Order of Business Number Seven.

PRESIDENT GRAYBILL: Without objection, we'll revert to Order of Business Number Seven, Resolutions.

Mr. Murray.

DELEGATE MURRAY: Mr. President, the Convention has before it Resolution Number Eleven, which is a resolution introduced this day by the Committee on Rules. When we previously took up the matter of the election to be held in conjunction with the June sixth primary election, we were asked by the Convention to detail certain information relative to this election. We have considered this matter in detail and the resolution contains our recommendations. Because of the condition of the statutes of Montana with respect to the designation, special election, and that subject being, it appears, primarily directed toward the filling of a vacancy in office or an election for money, it occurs to us that we must ask for a separate election or an election separate from the state primary election but which would be held simultaneously on the same day, June

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sixth, 1972, for the purpose of ratifying or rejecting the proposed Constitution. And, our resolution I believe to be self-explanatory. I might note that at the top of page two in line one, the committee has suggested an amendment where it says, the election notice and direct each election judge. That should be changed to county clerk and recorder because it would be nearly impossible to have each election judge post the notice that we require.

PRESIDENT GRAYBILL: Very well, we'll propose an amendment on line one of page two to strike the words, election judge, and put in the words, clerk and recorder. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

PRESIDENT GRAYBILL: So ordered.

DELEGATE MURRAY: Now, the other matter to be considered is the form of the --

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Yes?

PRESIDENT GRAYBILL: I think you should read this, or let us read it. I want everybody to understand it.

DELEGATE MURRAY: I'll read it then.

PRESIDENT GRAYBILL: Maybe you could read it and comment as you go along.

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DELEGATE MURRAY: O.K. In accordance with section seventeen of the Constitutional Convention Enabling Act, and that's the enabling act that created this Convention, Chapter 296, Laws of 1971 as amended by Chapter One, Extraordinary Session, Laws of 1971, the Convention hereby resolves that: Section One: An election separate from the state primary election shall be held simultaneously on June 6, 1972, for the purpose of ratifying or rejecting the proposed Constitution, and I have already discussed that. The question of adopting the proposed Constitution and related questions, if any there be on the ballot and I submit there will be one because of our action relative to bicameralism and unicameralism, shall be submitted to the people on a separate ballot which shall be certified by the secretary of state in the form to be adopted by the Constitutional Convention. We will finally, at the end of this Convention, determine the form of the ballot. We will certify that to the secretary of state, and that ballot will be printed and distributed. It will be a separate paper ballot. It will not be in connection with a machine or the vote-o-matic card punching devices that some of us have in our counties because we do not want to chance in any way the possibility that this might be considered as a part of the regular primary election. Section Three: The county commissioners in each county shall furnish separate pollbooks, precinct registers, tally sheets and any other supplies necessary for holding a separate

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election. In doing so, we think that we will further instruct the judges in all of our one thousand some precincts to ask people if they desire to vote on the Constitutional issue, and if they desire to do so, we will have the necessary supplies for them to sign a separate pollbook. They will then be considered as voting in this election. If they decide to pass the question, they will not sign the book and they will not pick up a ballot. In this manner we think we will enable ourselves to better overcome the prospect of facing the language of our existing Constitution which says that we must have a majority of the voters who are participating in the election. Four: The votes cast for the ratification or rejection and related questions shall be tabulated, returned and canvassed separately from the votes cast in the primary election but in the same places, in the same manner, and by the same election judges, clerks and canvassers. This further goes along with our thinking that we would keep our election separate in every manner from the primary election. Five: The secretary of state shall prescribe the form of the election notice and direct each clerk and recorder to post the notice in public places in their precincts at least twenty days prior to the election and direct each board of county commissioners to publish notice of the election in a newspaper of general circulation in the county once at least ten days before the election. That's self-explanatory and in accordance with existing law. Section

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Six: The election laws of Montana shall apply in all other respects to the constitutional ratification or rejection election including notice of close of registration. And, that's to cover the law -- the enabling act provisions relative to that and to make sure that we cover all of the election problems that might arise. Section Two, subsection one: The secretary of state is hereby requested to requisition the purchasing division of the department of administration to call for bids for the printing of the proposed Constitution with comments and report to the people as required by subsections four and five of section seventeen of the Constitutional Convention Enabling Act, which shall be printed in the form prescribed by the Convention. And, section two, there is attached to this resolution a requisition approved by the Constitutional Convention for use by the secretary of state in requesting the call for bids. Now, that is self-explanatory and when we discussed this matter previously, I mentioned to you that there was a problem of timing and in order to get this matter on the ballot on June sixth, we must call for bids because there will not be time for us to complete our work and then call for bids, and the requisition is for that purpose. You will notice that there is a date left blank in the second paragraph of the typewritten material on the requisition: Proofed printers copy to be furnished to successful bidder no later than -- then there is a blank. When the requisition was printed a few days ago,

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it contained a date and we left it out for this purpose, because it is necessary that I go down to the department and establish a new date. The date that they used was not proper for our purpose and was too early and, therefore, we left it blank and I must ask your indulgence to be able to go down and take care of that matter. Now, what we're talking about in this requisition is the document that many of you have seen and I have it in my hand and show it to you now. This is the Illinois voter information pamphlet. It is tabloid size, which is half the size of a regular newspaper. It is printed on newsprint. We will use white newsprint. We envision three colors on two pages, the front and back, for purposes of dressing it up a little. We think that we will have the money for that purpose. Inside this document is contained the report to the people, starting on the first page, and then you will see inside the sample ballot that many of you have already inspected. Then you will notice that the Constitution is set forth inside in two colors and two types of print. The two colors designate the section of the Constitution -- or, one color designates the section of the Constitution. The other color designates the explanation of this Convention as to that section, whether it would be identical with the present Constitution in Montana or what the change might be, and the two colors have been used in at least Illinois and Arkansas, as we have been able to discover from our examination. We feel that we will be able to

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complete all our printing and work within the twenty-four pages used by the state of Illinois, and I think the same number of pages, or even fewer, or lesser, were used by Arkansas. In Illinois, I might note to you, there were a couple of pages which are filled, one, with the names of the fifty-eight Delegates -- or a hundred and some Delegates who participated in the Constitutional Convention, and a letter to the public by the secretary of state. We envision that we would use these for better purposes unless the space became available and we could use them for such purposes. We feel that the document used in Illinois and Arkansas is such that it would be to our advantage to use the same thing. There is no question but what it is cheaper to use this type of document than it is to print a book with all that might be needed in it and certainly it can be printed with much greater dispatch. We envision and the bid -- the requisition calls for the printer to deliver the requisite number of copies as are on appendix two to the various clerk and recorders, directly to the various clerk and recorders, so we do not run into the problem of having delivery to the office of the secretary of state and then the burden of having that office make the necessary mailings or deliveries or shipments to the various clerk and recorders in Montana. Well, briefly, that covers the intent and purpose of the resolution. I would like very much for you to give it consideration at this time and if possible to adopt it because I would

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like to take the matter up with the purchasing department and the office of the secretary of state on Monday morning, and if we do not take care of it now, it would be sometime Tuesday or perhaps Wednesday before we could do it and, Mr. President, I move that we adopt Resolution Number Eleven.

PRESIDENT GRAYBILL: Very well, you have heard the motion. First of all, the Chair would like to make a comment and then we'll have questions. Mr. Murray, I think you should point out to the body that the twenty-four thousand dollars referred to on the requisition is Account Number 110100, Appropriation Number 12255, and that is not our appropriation. That's an additional forty-one thousand dollar appropriation that the secretary of state has and he claims the difference between twenty-four and forty-one are necessary for him to set up the election. Isn't that correct?

DELEGATE MURRAY: Yes, Mr. President.

PRESIDENT GRAYBILL: So, this is not our money shown there. Now, my point, Mr. Murray, in bringing this up -- either by letter accompanying this, or perhaps we should amend the requisition and I don't think that need bother the requisition, I think it should be made clear to bidders that this may not be all the money we have available, that this is one of the sources -- one of the projects for which we have applied for the federal funding and which we might also have other funds of our own available. We certainly want to do the proper job

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on this pamphlet and we are simply trying to get bid prices, but the twenty-four thousand is from the secretary of state's appropriation and not our four hundred and ninety-nine thousand dollar appropriation. Am I correct?

DELEGATE MURRAY: Yes, you are right, Mr. President. May I also say that the legislature, in appropriating the forty-one thousand dollars within which the twenty-four thousand dollars was included to the office of the secretary of state, envisioned one of those six by nine pamphlets that you received when you were considering the question of voting for the Delegates to this Constitutional Convention, or for the Convention itself, and we felt that that was not a satisfactory document and that we should go better than that. Now, I might also say that Illinois and Arkansas, in addition to the voter information pamphlet such as this, printed a book, but we do not think that we, by any means, have the funds to print an additional document and that by dressing this one up with the colors -- and this has been handed to many people to use; it's still in pretty good condition. It's been in my file for thirty days anyway and it's been through Style and the President and the officers of this Convention. It seems to hold up pretty well and I think will be a pretty good job, do a pretty good job for us.

PRESIDENT GRAYBILL: Now, is there question or discussion from the body?

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Mr. Gysler.

DELEGATE GYSLER: Would Mr. Murray yield to a question?

DELEGATE MURRAY: Yes, sir.

DELEGATE GYSLER: Mr. Murray, on your requisition -- bid security in the amount of five percent of the total bid is requested -- shouldn't that requested be required?

PRESIDENT GRAYBILL: Where was that, Mr. Gysler?

DELEGATE GYSLER: Requisition -- down -- there's a single line about half way down through it.

DELEGATE MURRAY: Well, I didn't cut the requisition. That's cut from the department of purchasing and I presume that that is the language they use. We can change it to required if you want to, but it's their requisition. It isn't ours. That is on for illustrative purposes only, really.

DELEGATE GYSLER: It just seemed to me to be good business.

DELEGATE MURRAY: I'm sure they will require it, although it says requested.

PRESIDENT GRAYBILL: Are there other questions about the resolution or the requisition?

Mr. Monroe.

DELEGATE MONROE: Mr. President, in the very first paragraph there, now, this doesn't include the mailing costs, am I correct?

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DELEGATE MURRAY: This includes the shipping cost to the county clerk and recorder, but does not include the mailing cost of mailing this document by the county clerk and recorder, which is a county expense, to the individual voters.

PRESIDENT GRAYBILL: In other words, the mailing cost is not our cost, Mr. Monroe. It's the county clerk and recorder's cost.

DELEGATE MONROE: O.K., another question. The balance of the money -- of the forty-one thousand dollars -- that's to pay election clerks and judges and so forth?

DELEGATE MURRAY: The balance of that money is for use by the office of the secretary of state to do what it has to do to conduct this election.

PRESIDENT GRAYBILL: Are there other questions of Mr. Murray?

(No response)

PRESIDENT GRAYBILL: Is there other discussion about Resolution Number Eleven?

(No response)

PRESIDENT GRAYBILL: Very well, members of the Convention, you have before you Mr. Murray's, the chairman of the Rules Committee, motion that Resolution Number Eleven be adopted by this Convention. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

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PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: (No audible response)

PRESIDENT GRAYBILL: The Ayes have it and so ordered. Very well, I think there are no other motions or resolutions.

Mr. Murray.

DELEGATE MURRAY: Mr. President, I move we advance to Order of Business Number Eleven.

PRESIDENT GRAYBILL: Without objection, we will advance to Order of Business Number Eleven.

Mr. Martin.

DELEGATE MARTIN: On behalf of the Public Information Committee, we would just like to acknowledge and express our appreciation to the governor of Girls State, Elaine Koyama, who this past two weeks has stayed out of school and given yeoman's service in conducting tours, and I'd like to present her at this time. She's going back to Hardin to finish high school.

PRESIDENT GRAYBILL: Miss Koyama.

(Applause)

PRESIDENT GRAYBILL: Mr. Harper, did your daughter get away?

DELEGATE HARPER: (Inaudible. Mike turned off.)

PRESIDENT GRAYBILL: Well, we missed Miss Montana. At least we had her but we didn't get her introduced. I intended to and I guess -- if she gets back, Mr. Harper, point

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it out again. I'm sorry. I get engrossed in these interesting debates and things just --

(Laughter)

PRESIDENT GRAYBILL: -- sort of get away from me. Are there other announcements?

Mr. Blaylock.

DELEGATE BLAYLOCK: Bill of Rights Committee meeting, Tuesday morning at eight o'clock.

PRESIDENT GRAYBILL: The Chair --

Mrs. Warden.

DELEGATE WARDEN: Gee, I guess I'm way back here too far. The Public Information Committee in the Rules Committee at eight o'clock Tuesday morning.

PRESIDENT GRAYBILL: In the Rules Committee room at eight o'clock Tuesday morning. Mr. Murray, wait a minute. The Chair wishes to announce on Tuesday morning we will take up the Legislative Style and Drafting proposal and we'll take up the Executive Style and Drafting proposal and we'll be prepared to start on Bill of Rights after we have finished those two Style and Drafting proposals. So, please come prepared on them. The Executive one has been given to you and will have complied with the forty-eight hour rule by Tuesday morning. Are there other announcements?

(No response)

PRESIDENT GRAYBILL: Mr. Murray, have you your form?

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DELEGATE MURRAY: I have. Mr. President, I move, pursuant to the general powers vested in the Montana Constitutional Convention, and in accordance with the provisions of Section 7, subsection 6 of the Enabling Act, Chapter 296, Laws of 1971, that the Montana Constitutional Convention recess temporarily until nine A.M., on Tuesday, March 7, 1972.

PRESIDENT GRAYBILL: Very well, you have heard the motion to recess this Convention until Tuesday, March fourth at nine A.M. All in favor say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

DELEGATES: (No response)

PRESIDENT GRAYBILL: So ordered.

(Convention recessed at 6:00 o'clock, P.M.)

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